SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No 370

HOME BUILDING AND LOAN ASSOCIATION, APPELLANT,

vs.

JOHN H. BLAISDELL AND ROSELLA BLAISDELL, HIS WIFE

APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA

INDEX

	Original	Print
Record from district court of Hennepin County	1	1
Amended notice of motion for order extending period of redemption from foreclosure sale, etc	1	1
Amended petition	3	2
Bill of exceptions and order settling same	6	5
Order dismissing petition	8	6
Exhibit "A"—Mortgage deed	9	7
Notice of motion for new trial	10	12
Order denying motion for new trial	11	13
Memorandum, Selover, J	11	13
Notice of appeal (omitted in printing)	17	
Opinion, Holt, J., supreme court, first appeal	18	18
Concurring opinion, Wilson, J., supreme court	28	28
Concurring opinion, Olsen, J., supreme court	31	30
Concurring opinion, Loring, J., supreme court	34	33
Dissenting opinion, Stone, J., supreme court	35	34
Statement of evidence	41	42
Caption	47	42
Respondent's objection to any evidence	47	42
Colloquy (omitted in printing)	49	
Testimony of Rosella Blaisdell (omitted in printing)	51	

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 23, 1933

were sold; that said premises are the home and homestead of your petitioner; that the equity of petitioners in said premises is of the value of many thousands of dollars; that petitioners have made every reasonable effort to refinance said premises and mortgage loan and to redeem said premises from said sale, but have, by reason of the grave public economic emergencies and depression, been wholly unable to do so and that they are without any adequate means of refinancing said premises or redeeming the same from said sale at the present time, but that petitioners have good reason to believe and do believe that, if granted a reasonable extension of the period in which to redeem said premises from said sale with the accompanying right to occupy and manage the same during said extended period, that they will be able to either redeem said premises or to sell and dispose of their equity in said premises for a sum largely in excess of said foreclosure sale price, during said extended period for redemption; and that unless said period to redeem be so extended, said premises and homestead will be and become irrevocably lost to them.

George C. Stiles, Attorney for Petitioners, 404 Hodgson Building, Minneapolis, Minnesota.

[fol. 3] IN DISTRICT COURT OF HENNEPIN COUNTY

AMENDED PETITION

To the Honorable District Court for the county of Hennepin, state of Minnesota:

Your petitioners, John H. Blaisdell and Rosella Blaisdell, respectfully represent and state to the court:

I

That during all the time hereinafter mentioned, they were and still are the owners and in possession of that certain tract or parcel of land, known and described as lot eight (8), block twenty (20), Wilson, Bell and Wagners Addition to Minneapolis; that said premises were during all of said time and now are occupied, used and owned by your petitioners as their home and homestead.

II

That said premises were during all the time herein mentioned and now are fairly and reasonably worth and of the value of fifteen thousand dollars ($15,000.00).

III

That said premises were during all the time herein mentioned executed and delivered to the Home Building and Loan Association a mortgage upon said premises, to secure the payment of money by petitioners to said Home Building and Loan Association; which said mortgage contained a valid power of sale by advertisement in the usual and customary form of such powers of sale.

IV

That thereafter, your petitioners, unavoidably and by reason of facts and circumstances wholly beyond their control, defaulted in the conditions of said mortgage, whereupon said mortgagees foreclosed said mortgage by advertisement and on the 2nd day of May, 1932, caused said premises to be sold and were by said respondent, Home Building and Loan Association, bid in under said foreclosure proceedings, for the sum of $3,700.98; that the period of redemption from said mortgage foreclosure sale will expire on the 2nd day of May, 1933, and that said respondent is now the owner and holder of the sheriff's certificate of sale, in said foreclosure proceedings.

[fol. 4]

V

That your petitioners have made earnest efforts to refinance said loan and to redeem said property from said foreclosure sale, but because of the grave public economic depression and emergency which your petitioners allege now exists and for upwards of three years has existed throughout the state and nation, they have been and still are unable to obtain any substantial loan upon said property, or to refinance said mortgage or to redeem their said property from said foreclosure sale; and that unless the extension of the period of redemption prayed for in this petition be granted by the court, said premises and homestead of your petitioners will be and become irrevocably lost to them.

VI

That aside from said premises, your petitioners have no other property or means upon or through which to obtain funds necessary to redeem from said mortgage foreclosure sale.

VII

That the reasonable value of the gross rents of said premises during normal economic conditions or times is approximately twenty-three hundred forty dollars ($2,340.00) per annum and that the reasonable and necessary expenses of operation, upkeep, insurance and taxes is approximately nine hundred sixty dollars ($960.00) per year, leaving a net monthly rental income during normal times of about one hundred fifteen dollars ($115.00) and that the reasonable value of the rents realized from said premises for the twelve months between May 1, 1932, and May 1, 1933, has been and is approximately the sum of thirty-seven dollars ($37.00) per month, and no more.

VIII

That the fair and reasonable value of said property greatly exceeds the amount of money due to said mortgage, including all liens, costs and expenses and that said mortgagee is amply secured.

IX

That unless the time to redeem from said sale be extended, as hereinafter prayed, said petitioners will suffer the loss of their entire equitable estate in said premises, to the unjust enrichment of said mortgagee.

[fol. 5]

X

That no previous application has been made for an extension of the period of redemption from said sale.

XI

That this petition is made in support of a motion or application for an order of this honorable court, after hearing upon said motion, which is hereto attached, extending the period of redemption from said sale until May 1st, 1935, and determining the reasonable value of the income

of the property sold, or the reasonable rental value thereof, or both, and directing and requiring your petitioners to pay all or such reasonable part of such income or rental value, in or toward the payment of taxes, insurance, interest and/or mortgage indebtedness, as to the court shall appear just and equitable, at times and in the manner to be fixed, determined and order- by the court.

George C. Stiles, Attorney for Petitioners, 404 Hodgson Building, Minneapolis, Minnesota.

Duly sworn to by John H. Blaisdell and Rosella Blaisdell. Jurat omitted in printing.

[fol. 6] IN DISTRICT COURT OF HENNEPIN COUNTY

Bill of Exceptions, Objections to Introduction of Evidence and Motion to Dismiss

Be it remembered that at the present regular term of this court held at the city of Minneapolis, Hennepin County, Minnesota, on the 11th day of May, 1933, the Honorable Arthur W. Selover, judge of said court presiding, the above entitled cause came on for trial, George C. Stiles, Minneapolis, Minnesota, appeared as counsel on behalf of the petitioners, and Strong, Myers & Covell, Minneapolis, Minnesota, appeared as counsel on behalf of respondent. That in the trial the following proceedings were had, namely:

JOHN H. BLAISDELL, was called and sworn as a witness on behalf of the petitioners, testified as follews:

Direct examination.

By Mr. Stiles:

"What is your name?

Mr. Covell: I object to the introduction of any evidence in this action on the grounds that the Act, Chapter 339 of the Laws of Minnesota, 1933, under which this proceeding is brought is in violation of the Constitutions of the United States and of Minnesota, and respondent moves that the petition be dismissed for that reason.

(Arguments.)

The Court: Objection is sustained and motion to dismiss the petition is granted.

Mr. Stiles: The petitioners except to the rulings of the court:"

The above named petitioners, on the 18th day of May, 1933, and within the time allowed therefor, tendered this proposed bill of exceptions and prayed that the same be signed and sealed and made a part of the record in this cause.

Now, therefore, I, Arthur W. Selover, judge of said court, who presided at the trial of said cause, after due notice being given to respondent in said cause, and upon examination and consideration of the proposed bill of exceptions, and the court having found the same to conform to the truth, I hereby certify that the above and foregoing [fol. 7] transcript of the evidence and proceedings taken in the trial of said cause contains all the evidence offered, given or introduced in said cause; all the objections and motions thereto and all the rulings of the court to such objections and motions and all the exceptions to such rulings, and the same is ordered and certified as part of the record in these proceedings and cause.

Dated this 18th day of May, 1933.

A. W. Selover, Judge of the District Court, Fourth Judicial District.

[fol. 8] IN DISTRICT COURT OF HENNEPIN COUNTY

ORDER SUSTAINING OBJECTION AND DISMISSING PETITION

The above entitled cause came on for trial before the undersigned, one of the judges of the above entitled court, on the 11th day of May, 1933, at 10 o'clock in the forenoon of that date, George C. Stiles, Esq., appearing as attorney for petitioners, and Strong, Myers & Covell appearing as counsel on behalf of the respondent.

That the petition prayed for an extension of the period of redemption from the sale of a certain mortgage, a copy of which is attached to the petition and marked Exhibit A. The petitioners sought such extension under the authority of Chapter 339, of the Session Laws of Minnesota, 1933, at the opening of the trial and before the introduction of any

testimony therein respondent objected to the introduction of any evidence on behalf of the petitioners on and for the reason that Chapter 339 of the Session Laws of Minnesota, 1933, was unconstitutional in that it impaired the obligation of contract in violation of the federal and state constitutions; that it deprived the respondents of its property without due process of law; that said Chapter 339 is a special law and not a general law and therefore violates Art. 4, Sec. 33, of the Constitution of Minnesota and that the said Chapter 339 is class legislation and violates Art. 4, Sec. 33, of the Constitution of Minnesota, and that said Act is not justified nor warranted as an exercise of police power and that said Act serves a private and not public purpose.

Court having considered all the files and records herein and having heard the argument of counsel and having been fully advised in the premises,

It is hereby ordered, that the said motions be granted and that the petition be and hereby is dismissed.

Let judgment be entered accordingly.

Dated May 16th, 1933.

By the Court,

A. W. Selover, Judge.

[fol. 9] EXHIBIT "A"

This Indenture, Made this 1st day of August, A. D. 1928, between Rosella Blaisdell and John H. Blaisdell, her husband, of Hennepin County, Minnesota, parties of the first part, and Home Building and Loan Association, Minneapolis, Minnesota, party of the second part:

Witnesseth, That the said parties of the first part, for and in consideration of the sum of Thirty-eight hundred dollars ($3800.00) to them in hand paid by said party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell and convey to the said party of the second part, its successors and assigns, forever, all of the tract or parcel of land lying and being in the County of Hennepin and State of Minnesota, described as follows, to-wit: Lot Eight (8), Block Twenty (20), Wilson, Bell and Wagner's Addition to Minneapolis according to the plat thereof on file and of record in the office of the Register of Deeds in and for said Hennepin County.

To have and to hold the same, Together with all singular the hereditaments and appurtenances, including all apparatus and fixtures of every description for watering, lighting, heating and screening said premises, and the use, income, rents and profits thereunto belonging or in anywise appertaining, unto the said party of the second part, its successors and assigns forever. And the said parties of the first part do covenant with the said party of the second part, its successors and assigns as follows: First, that they are lawfully seized of said premises; Second, that they have good right to convey the same; Third, that the same are free from all incumbrances; Fourth that the said party of the second part, its successors and assigns, shall quietly enjoy and possess the same; and that the said parties of the first part will warrant and defend the title to the same against all lawful claims.

Provided, nevertheless, That, whereas, the said parties of the first part have entered into a contract in writing with said Association, in the words and figures following, to-wit:

$3800.00. Minneapolis, Minnesota, August 1, 1928.

"Received of Home Building and Loan Association, of "Minneapolis, Minnesota, Thirty eight hundred dollars, as "loan advanced on 38 shares of unpaid loan stock of said "Association, No. 384, owned by Rosella Blaisdell and John "H. Blaisdell, her husband, in consideration thereof we "agree to pay said Association interest on said loan, and "on all past due balances of interest and other charges "under this contract and the mortgage securing said loan "until paid, at the rate of seven per cent per annum, pay- "able monthly. We also agree to pay at the office of said "Association monthly without demand therefor, such addi- "tional sums as will, together with the monthly interest "aforesaid, amount to not less than the sum of Forty one "and 80/100, all of which sums shall be applied as follows:

"First. To the payment of interest accruing under this "contract.

"Second. To the payment of any insurance premium, "taxes, or assessments paid by said Association according "to the by-laws of said Association, and said mortgage.

"Third. The balance of said payments shall be credited "as dues on said stock, and all accruing credits thereon are "hereby assigned to said Association as collateral security "for said loan. Said Association is hereby authorized to "withdraw semi-annually, to-wit: on the first days of Jan- "uary and July of each year, the amount so credited on "said stock and apply the amount so withdrawn as a credit "on the principal of said loan. The amount remaining "unpaid after making any such credit shall bear interest "thereafter at the rate above named.

"Said monthly payments shall continue until said loan "and all other sums advanced in accordance with this con- "tract or said by laws shall be paid with interest as herein "specified.

"Said loan may also, at any time, be paid in full, or in "part by payment or payments of amounts of One Hun- "dred Dollars each, and such payments shall be credited "upon said loan, and for each One Hundred Dollars so "paid, one share of said stock shall be cancelled. All right "to dividend on said stock is hereby waived. If the entire "amount of the loan is paid within five years, 60 days ad- "vance interest on the original sum shall be paid.

"If any payments required by this contract shall remain "due and unpaid for two months, or if any default occurs "in the conditions of the mortgage securing said loan, then "the entire amount of this obligation remaining unpaid "shall immediately thereupon become due and payable."

Now Therefore, If the said parties of the first part shall pay to said Association, its successors or assigns, the said sums of money when due, as set forth in said contract, then this deed shall be null and void, otherwise to be and remain in full force and effect. But if default shall be made in the said monthly payments or of any part thereof, for the space of two months after the same shall become due, or if any taxes or assessments, or premium for insurance, on the property hereby mortgaged, be due and unpaid for the space of two months, then and in such case, the whole principal debt remaining unpaid shall immediately thereupon become due, payable and recoverable; and if default shall be made in any of the conditions, stipulations, covenants and promises herein, or in said contract contained, on the part of said parties of the first part, the said parties of the first part do hereby authorize and empower the said party of

the second part, its successors or assigns, or its or their agent or attorney, to at once enter upon and take full possession of said premises, and to take and receive the rents, use, profits and income on said premises, and apply the same to the payment of taxes, insurance premiums, and the payments accrued and accruing under this mortgage and said contract, the cost of repairs on said premises, and the cost of collecting said rents, income and profits, and to pay the surplus, if any, to said parties of the first part, their heirs and assigns. But such possession and use shall in no way prejudice the right of redemption in case of foreclosure of this mortgage. And the said parties of the first part, in case of any default do hereby authorize and empower the said party of the second part, its successors and assigns, to sell the hereby granted premises at public auction, and convey the same to the purchaser in fee simple, agreeable to the statute in such case made and provided; and out of the money arising from such sale to retain the principal and interest which shall then be due on said contract, and all sums of money paid by the party of the second part for taxes on said premises and for insurance on said buildings together with all costs and charges, and also the sum of Seventy-five Dollars, as attorney's fees, and pay the overplus, if any, [fol. 9a] to the said parties of the first part, their heirs, administrators and assigns. And the said parties of the first part do further covenant and agree to and with the said party of the second part, its successors and assigns, to pay said sums of money, taxes, assessments and premium on insurance above specified at the times and in the manner above mentioned, together with all costs and expenses, if any there shall be, and also in case of the foreclosure of this mortgage the sum of Seventy-five Dollars as attorney's fees, in addition to the costs and expenses of said foreclosure, which said sum is hereby acknowledged and declared to be a part of the debt hereby secured, and which shall be assessed and payable as part of said debt, and that they will pay all taxes and assessments of every nature that may be assessed on said premises, or any part thereof, before any penalty shall accrue for nonpayment thereof, and will keep said mortgaged premises insured in some responsible insurance company designated by the President of said Association, for the sum of Thirty-eight hundred Dollars Fire Insurance and Thirty-eight hun-

dred Dollars Tornado Insurance, and the insurance so taken or assigned that in case of loss the same shall be payable to said Association.

And it is hereby expressly agreed between the parties hereto, that upon default of the said parties of the first part, their heirs and assigns, to keep the buildings upon the said premises so insured, and the insurance so taken or assigned that in case of loss, if any, the same shall be payable to said Association, or to pay said taxes or assessments as above provided, the said party of the second part may, in its option, keep the same insured, and may pay said taxes and assessments, and any sums paid to procure such insurance, or for taxes or assessments, as aforesaid, shall be deemed to be a portion of the moneys secured by this mortgage, and recoverable.

In testimoney Whereof, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

Rosella Blaisdell (Seal). John H. Blaisdell (Seal).

Signed, sealed and delivered in presence of Theo. Kolste, Judith Fritz.

STATE OF MINNESOTA,
Couty of Hennepin, ss:

On this 1st day of August A. D. 1928, before me personally appeared Rosella Blaisdell and John H. Blaisdell, her husband, to me known to be the same persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Theo. Kolste, Notary Public, Hennepin County, Minn. My Commission Expires October 20, 1932. (Notarial Seal.)

[Endorsed:] No. ——. Mortgage Deed to Home Building & Loan Association. Office of Register of Deeds. County of Hennepin, State of Minnesota, ss. I hereby certify that the within deed was filed for record in this office on the — day of ——, A. D. 192-, at — o'clock — M. and is duly recorded in Book —— of Mortgages of the records of this office on page —. —— ——, Register of Deeds, per —— ——, Deputy.

[fol. 10] IN DISTRICT COURT OF HENNEPIN COUNTY

NOTICE OF MOTION FOR A NEW TRIAL

To the above named respondent:

You will please take notice, that at a special term of the above named court to be held in the court house in the city of Minneapolis, on the 17th day of May, 1933, at two o'clock in the afternoon thereof, or as soon thereafter as counsel can be heard, the above named petitioners will move the court for an order granting them a new trial in the above entitled action.

Grounds of said motion are that the court erred in each and all of the following particulars:

1. In excluding all evidence of the petitioners;

2. In dismissing petition in this proceeding and action;

3. In holding that Chapter 339, Minn. Laws of 1933, impairs the obligations of the mortgage contract in violation of the federal and state constitutions;

4. In holding that the Act deprived the respondents of their property without due process of law;

5. In holding that Chapter 339, Minn. Laws of 1933, is a special law and not a general law and therefore violates Art. 4, Sec. 33, of the Constitution of Minnesota;

6. In holding that said Act is class legislation and violates Art. 4, Sec. 33, of the Constitution of Minnesota;

7. In holding that the said Act was and is not justified nor warranted as an exercise of police power;

8. In holding that no public emergency existed which would justify the Act under the police power of the state;

9. In holding that the Act serves a private and not a public purpose;

10. In holding that the Act is unconstitutional.

That the above motion will be made and based upon the bill of exceptions, a copy of which is hereto attached and herewith served upon you and upon all the files and records herein.

George C. Stiles, Attorney for Petitioners, 404 Hodgson Building, Minneapolis, Minnesota.

[fol. 11] IN DISTRICT COURT OF HENNEPIN COUNTY

ORDER DENYING NEW TRIAL

The above entitled matter came on before the undersigned, one of the judges in the above named court, upon the motion of the petitioners for an order granting a new trial therein. George C. Stiles, Esq., appearing upon behalf of petitioners in support of said motion, and Strong, Myers & Covell, Esqs., appearing on behalf of respondent and in opposition to said motion.

The court, having considered all the files and records herein and having heard argument of respective counsel and being fully advised in the premises, it is hereby ordered that the said motion be and the same is hereby denied in all respects.

It is further ordered: That the memorandum hereto attached be and the same is hereby made a part of this order.

May 17th, 1933.

A. W. Selover, Judge of the District Court, Fourth Judicial District.

IN DISTRICT COURT OF HENNEPIN COUNTY

MEMORANDUM

The court has endeavored to give to the questions here involved such careful and studious attention as their great importance and the able manner in which they have been presented by counsel deserve.

The legislative Act here involved undertakes to give a positive and arbitrary extension of 30 days from and after the date of the passage of the Act, for redemption from mortgage foreclosure sales of real property, and to authorize the court on terms to be fixed by the court to extend further the time to redeem up to May 1st, 1935; and, both as to pending and future foreclosures of mortgages by advertisement under powers of sale, purports to abolish sales under such powers, and to compel the foreclosures to proceed by action instead, and attempts to restrict and prohibit within certain limits, the taking of deficiency judgments on

such foreclosure sales. The constitutionality of the Act is challenged, on the ground, first, that it violates the Constitution of the United States, Article I, Section 10, providing [fol. 12] that no state shall pass any law impairing the obligation of contracts; and the Constitution of the state of Minnesota, Article I, Section II, providing that no law impairing the obligation of contracts shall ever be passed; second, that it violates also that portion of the Fourteenth Amendment to the Constitution of the United States providing that no state shall deprive any person of property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws; third, that it violates Article I, Section 2, and Article IV, Section 33, of the Constitution of the state of Minnesota, prohibiting special legislation, and, fourth, that it violates Article IV, Section 27, of the Constitution of the state of Minnesota, providing that no law shall embrace more than one subject which shall be expressed in its title.

It seems almost too plain for argument that the law on its face does impair the obligations of the mortgage contract. If specific authority in this state be needed, it is to be found in the cases of Heyward v. Judd, 4 Minn. 483 (375); and Goeven v. Schroeder, 8 Minn. 387 (344), holding that a statute attempting to alter the period of redemption on previously existing mortgages containing powers of sale, impaired the obligation of the contracts; and in the case of O'Brien v. Krenz, 36 Minn. 136, holding that a statute attempting to abolish foreclosures under powers of sale in mortgages existing before its passage, impaired the obligation of the contracts, was unconstitutional and void. Other pertinent cases, too numerous to mention, could be cited both from state and federal courts, including the Supreme Court of the United States.

Great stress, however, is placed by the petitioner upon the nine "Whereas" clauses preceding the enacting clause of the statute here involved, whereby the legislature attempts, by the recitals therein, to establish an emergency and to make the Act general instead of special legislation, and therefore within the police power of the state. The further claim is made in this respect that the court must take these legislative declarations without question and assume that the Act is consequently of a general and not of a special nature. This claim seems to be met effectively

by the provisions of the Constitution of the state of Min-
[fol. 13] nesota, Article IV, Section 33, providing as follows:

"In all cases when a general law can be made applicable, no special law shall be enacted; and whether a general law could have been made applicable in any case, is hereby declared a judicial question, and as such shall be judicially determined without regard to any legislative assertion on that subject."

Great reliance is also placed by the petitioner upon two decisions of the Supreme Court of the United States, viz.:

Block v. Hirsch, 256 U. S. 135, 41 Sup. Ct. 458; and
Marcus Brown Holding Co., Inc., v. Feldman, 256 U. S. 170, 41 Sup. Ct. 456,

holding constitutional in the Block case an Act of Congress permitting tenants to retain possession of leased premises contrary to the terms of existing leases, and in the Marcus Brown case holding constitutional the so-called Housing Act of the Legislature of the state of New York. In both these cases the enactments were challenged as impairing the obligation of existing contracts and taking property without due process of law, but were sustained by a five to four decision as proper exercises of police power. These cases are both clearly distinguishable from the instant case. The acts are both sustained as within the police power, because they affected the health and safety of the people of the respective communities in which they were effective and were therefore for the benefit of the general public. We are not here concerned with any consideration of general import as to public health, public safety or public morals or of any other consideration of a public and general nature which properly can bring into operation the police powers of the state.

It is true that in the decisions just referred to reference was made to legislative recitals of an existing emergency and that the court in passing upon that matter stated that while such recitals were not conclusive, they were entitled to "great respect." There was not involved, however, in either of those cases any such constitutional provision as that in Section 33 of Article IV of the Constitution of this state, providing, as previously quoted, that such questions

[fols. 14] "shall be judicially determined without regard to any legislative assertion on that subject."

It may and must be conceded that the police power of the state is very extensive and in a proper case and within the limitations fixed by law may impinge upon private rights, contract and otherwise, but it is recognized in all decisions that its exercise in all cases must be for a public and not for a private purpose. It cannot be used properly to nullify completely the constitutional provisions forbidding the impairment of the obligations of contracts and the taking of property without due process of law. In the opinion of the court the statute now before us attempts to do both and is not for the benefit of that limited class of debtors who have given mortgages upon real property. In singling out for special protection this particular class of debtors, the statute here involved unjustly discriminates against debtors who have not given mortgages on real estate but have given mortgages on personal property, or have given notes with ordinary collateral security, or have given wholly unsecured notes, or who are indebted in some other manner. It discriminates also against mortgagees of real property as compared with creditors holding or owning obligations other than real estate mortgages.

For every mortgagor who, oppressed by the burden of the mortgage debt, prays the court under the provisions of this Act that both federal and state constitutional provisions be annulled or suspended for his benefit, there is a mortgagee equally oppressed by his debts who in order that he may pay them prays as fervently that the protection of these Constitutions be not removed from him. If a court operating under this statute gives special relief to the mortgagor of real estate, the vast array of other debtors outnumbering these mortgagor debtors at a ratio of perhaps a thousand or more to one, to whom no relief can be granted under the Act, have just reason to complain. An Act establishing a general moratorium as to all debts could more easily be sustained than the statute here in question.

Assuming and conceding the existence of an emergency as extensive and oppressive as set forth in the "Whereas" clauses preceding the enacting clause of this statute, still [fol. 15] no proper exercise of police power can justify its enactment, since it is beneficial to a segregated few only of the many suffering debtors and necessarily discriminates against all the rest.

If a legislature can destroy a private real estate mortgage contract under the guise of an exercise of the police power of the state, it can so destroy all other contracts.

If legislation of this character be sustained here and generally followed in the several states by other legislation of similar import affecting mortgage and other contracts, the protective constitutional guarantees as to life, liberty and property will be subjected to a process of such destructive attrition that eventually little or nothing of them will escape the engulfing force of the police power of the state.

The court is satisfied that this statute violates not only the federal and state Constitutions forbidding impairment of the obligations of contracts, and the Fourteenth Amendment of the Federal Constitution forbidding any state to deprive any person of property without due process of law or to deny to any person within its jurisdiction the equal protection of the laws, but also the several provisions of the Constitution of the state of Minnesota against special legislation.

It is not necessary to consider, and the court does not consider or decide whether this statute violates also Section 27 of Article IV of the Minnesota Constitution providing that no law shall embrace more than one subject which shall be express in its title.

It has been intimated in argument that serious disturbances may arise on account of this and any other similar rulings. If such disturbances do arise, let the responsibility for them rest where it belongs, upon those who, by initiating and fostering this legislation, have created in the minds of a special and limited class of debtors a false hope that both the Constitutions of the United States and of the state of Minnesota may be annulled or temporarily set aside for their special benefit, rather than upon judicial officers who, [fols. 16 & 17] by their oath of office, have sworn to hold both of these Constitutions and to the best of their ability are endeavoring to see that they operate fairly, equitably and uniformly upon all whom they concern.

It follows from the views expressed by the court, that the motion to exclude evidence under the amended petition herein and to dismiss said petition on the grounds stated

in the motion must be and the same hereby is in all respects granted.

By the Court,

A. W. Selover, District Judge.

(Notice of appeal on file.) (Appeal bond waived.)

[fol. 18] [File endorsement omitted]

IN SUPREME COURT OF MINNESOTA

No. 164

Hennepin County

29615

JOHN H. BLAISDELL et al., Appellants,

vs.

HOME BUILDING AND LOAN ASS'N, Respondent.

—— Minn. —— 249 N. W. 334.

Holt, J., Wilson, C. J., Olsen, J., and Loring, J., concurring. Stone, J., dissenting.

SYLLABUS

1. It is conceded that Chapt. 339, L. 1933, under which the time for redemption from mortgage foreclosure sales may be extended, impairs the obligation of the mortgage contract.

2. The existence of the economic emergency justified the legislature in the exercise of the police power of the state to enact the law to relieve from the emergency.

3. Whether the emergency existed and was of such nature that resort might be had to the police power of the state was primarily for the legislature, but though the courts have authority to determine whether such emergency in fact exists, common knowledge of conditions and the action of the President and the Congress indicate a reasonable basis for legislative action.

4. The law goes no farther than reasonably necessary in granting relief under the existing conditions.

5. The title does not embrace more than one subject,—the extension of the time of redemption. The other matters are incidental.

6. The law is general, and not objectionable as special or class legislation.

Reversed.

[fol. 19] OPINION—Filed July 7, 1933

HOLT, Justice:

Appellants presented a petition to the district court for an order extending the period of redemption under the provisions of c. 339, L. 1933. The substance of the petition was that appellants owned a certain lot in Minneapolis, which was their homestead and of the reasonable value of $15,000; that appellants on May 1, 1931, executed and delivered their mortgage to respondent on said lot to secure the payment of a certain sum of money, which mortgage contained a valid power of sale by advertisement; that thereafter by reason of circumstances beyond the control of appellants default in the condition of the mortgage was made, and it was foreclosed by advertisement, and sold to respondent on May 2, 1932, for $3,700.98; that the time of redemption will expire on May 2, 1933, and that respondent is the owner and holder of the sheriff's certificate of sale on the foreclosure; that appellants have made earnest efforts to refinance the loan and redeem, but have failed because of the economic depression that has existed throughout the state for the last three years, and that unless the period of redemption be extended the property will be irretrievably lost to appellants; that the reasonable net income in normal times is $115 per month, and that for the last year it has been only $37.00 per month; that the reasonable value of the property greatly exceeds the money due on the mortgage; that unless the time to redeem from the said sale be extended, appellants will suffer the loss of their whole equitable interest in the property; and appellants prayed that the court grant a hearing to extend the period of redemption until May 1, 1935, that it determine the

reasonable rental value of the property, and directing and requiring appellants to pay all or such reasonable part of such rental value toward the payments of taxes, insurance and interest on the mortgage indebtedness as to the court appears reasonable and just. On the hearing respondent objected to the introduction of any evidence on the ground that c. 339, L. 1933, was unconstitutional in that it impaired the obligation of the mortgage contract, that it was special [fol. 20] and class legislation, and not warranted under the police power of the state. The objection was sustained, and appellants' motion for a new trial being denied, they appealed.

Appellants concede, as they must, that chapter 339, L. 1933, impairs the obligations of the mortgage contract. It is too long for insertion in an opinion. It is declared to be an emergency measure, and is not to remain in operation beyond May 1, 1935. Its object is to authorize the district court to extend the time for redemption from mortgage foreclosure sales and execution sales of real estate, and incidentally thereto, to withhold during that time the power of sale by advertisement, and the right to deficiency judgments. That this is impairing the obligation of the mortgage contract and the rights of judgment creditors is settled by the following decisions: Heywood v. Judd, 4 Minn. 377 (G); Goenen v. Schroeder, 8 Minn. 344 (G); Carroll v. Rossiter, 10 Minn. 141 (G); Hillebert v. Porter, 28 Minn. 496, 11 N. W. 84; O'Brien v. Krenz, 36 Minn, 136, 30 N. W. 458; Dunn v. Stevens, 62 Minn. 380, 64 N. W. 924; Bronson v. Kinzie, 1 How, 311; Edwards v. Kearzey, 96 U. S. 595; Barnitz v. Beverly, 163 U. S. 118.

The only ground upon which chapter 339, L. 1933 can be sustained is that it is legislation in virtue of the police power of the state called into exercise because of "the public economic emergency" which the act declares exists in the state. Respondent concedes that under the police power the state may impair the obligations of contract. Courts have so held. State v. Houghton, 144 Minn. 1, 174 N. W. 885, 176 N. W. 159; State v. Houghton, 164 Minn. 146, 204 N. W. 569; Sligh v. Kirkwood, 237 U. S. 52; Price v. Illinois, 238 U. S. 446; Perley v. North Carolina, 249 U. S. 510; Miller v. Schoene, 276 U. S. 272: In Sligh v. Kirkwood, supra, we find the following: "The police power, in its broadest sense, includes all legislation and almost every

function of civil government. Barbour v. Connolly, 113 U. S. 27. It is not subject to definite limitations, but is co-extensive with the necessities of the case and the safeguards of public interest. Canfield v. United States, 167 [fol. 21] U. S. 518, 524. It embraces regulations designed to promote public convenience or the general prosperity or welfare as well as those specifically intended to promote the public safety or the public health." To what extent emergency legislation under the police power of the state may impair contract obligations or impinge on any constitutional provision, has received exhaustive considerations in cases arising out of the so-called housing legislation in New York and in the District of Columbia. On all questions involved and decided therein the similarity or occasion for the emergency legislation and its effect in impairing the obligations of contract, and in violating the due process clause are so pointedly applicable here that we feel they should be followed. The opinion of Judge Pound in People v. LaFetra, 230 N. Y. 429, and the concurring opinion of Judge Crane, expressed in Guttag v. Shatzkin, 230 N. Y. 647, go quite fully into every legal proposition now raised. Edgar A. Levy Leasing Co. v. Siegel, 230 N. Y. 634, decided on the opinion in the LaFetra case, was affirmed in 258 U. S. 242. We quote from Judge Pound's opinion the principles controlling in a case of this sort: "Whether or not a public emergency existed was a question of fact, debated and debatable, which addressed itself primarily to the Legislature. That it existed, promised not to be presently self-curative, and called for action, appeared from public documents and from common knowledge and observation. If the lawmaking power on such evidence has dealt with it in a manner permitted by the constitutional limitations upon legislative power, so far as the same affect the class of landlords now challenging the statutes, the legislation should be upheld. * * * The proposition is equally fundamental that the state may establish regulations reasonably necessary to secure the general welfare of the community by the exercise of its police power, although the rights of private property are thereby curtailed and freedom of contract is abridged. (citing authorities) * * * Emergency laws in time of peace are uncommon but not unknown. Wholesale disaster, financial panic, the aftermath of war (Hamilton v. Kentucky Distillaries & W. Co.,

251 U. S. 146, 161, 40 Sup. Ct. 106, 64 L. ed. 194) earthquake, pestilence, famine, and fire, a combination of men [fol. 22] or force of circumstances may, as the alternative of confusion or chaos, demand the enactment of laws that would be thought arbitrary under normal conditions (Bowditch v. Boston, 101 U. S. 16, 18, 19, 25 L. ed. 980; American Land Co. v. Leiss, 219 U. S. 47, 31 Sup. Ct. 200, 55 L. ed. 82). Although emergency cannot become the source of power, and although the Constitution cannot be suspended in any complication of peace or war (Ex parte Milligan, 4 Wall. 2, 18 L. ed. 281), an emergency may afford a reason for putting forth a latent governmental power already enjoyed but not previously exercised." The laws involved in the LaFetra case permitted tenants to retain possession after the expiration of the lease upon paying reasonable rent, and, where a lease had been entered for a fixed rent, upon the tenant's application that the stipulated rent was unreasonable or extortionate he could have the rent reduced. The summary dispossessory remedy was temporarily withdrawn from the landlords. A somewhat similar housing or renting act was passed by Congress for the city of Washington. The act of Congress and the New York acts came before the Federal Supreme Court in Block v. Hirsch, 256 U. S. 135 and Marcus Brown Co. v. Feldman, 256 U. S. 179 (affirming 269 Fed. 606), and were sustained by a 5 to 4 decision. Later cases arising from the same acts are Edgar A. Levy Leasing Co. v. Siegel, 258 U. S. 242 and Chastelton Corporation v. Sinclair, 264 U. S. 543. In the Siegel case the New York housing acts were again under attack of various constitutional grounds, but upheld, there being only three dissenters at that time. The proposition was there pressed that the relation of landlord and tenant "is a private one and is not so affected by a public interest as to render it subject to regulation by the exercise of the police power." But the court held the question foreclosed by the Marcus Brown Co. case. Again it was contended that that case did not squarely present whether or not the housing acts impaired contract obligations, but the court in denying this contention, quotes from the Marcus Brown Co. decision: "The chief objections to these acts have been dealt with in Block v. Hirsch. In the present case more emphasis is laid upon the impairment of the [fol. 23] obligation of contract of the lessees to surrender

possession and of the new lease which was to have gone into effect upon October 1, last. But contracts are made subject to the exercise of the police power of the state when otherwise justified as we have held this to be." Several cases are cited to support the last proposition. It is, however, true that the dissenting justices deny that the cases sustain what the majority deduce from them. Even though the dissenting opinions in the Block and Marcus Brown Co. cases may appear more in harmony with past interpretation of constitutional provisions, this court should follow the principles established by the prevailing opinions therein. They, and the later cases above cited, hold that in an emergency the legislature under the police power of the state may temporarily withdraw a summary remedy given by statute for the enforcement of contract rights, provided some adequate remedy remains; that in a public emergency statutes may be enacted which impair temporarily the obligations of contract, provided they be such as the emergency reasonably demands and the impairment be no more than is just and equitable under the circumstances; and that whether such an emergency exists as justifies the exercise of the police power is primarily for the legislature to whose judgment courts must give due weight, but the courts do possess the final authority to determine whether the emergency does in fact exist (Chastleton Corporation v. Sinclair, supra), and whether the legislation for its relief is just and reasonable (Lawton v. Steele, 152 U. S. 133).

The main proposition upon which this law must rest is the existence of "a public economic emergency." True, the legislature in § 1 of the law declares that it exists, and a preamble of nine "whereases" seeks further to disclose the necessity for the law. It may be questioned whether an economic emergency should invoke the police power of the state to grant relief which impairs the obligations of contract. History reveals that when the Constitution of the United States was adopted the economic depression or emergency was, if anything, more acute under then existing conditions than at present, yet, notwithstanding, there was inserted in the document the prohibition against state legis- [fol. 24] lation impairing contract obligations. Economic depressions may scarcely be called emergencies for they occur frequently and with more or less severity. The extension of the period of redemption by the Kansas legis-

lature was no doubt caused by one of these economic depressions yet the court gave the subject of emergency legislation no consideration in Barnitz v. Beverly, supra, holding the law invalid because it impaired the obligation of contract. It may further be questioned as a fact whether there really is an emergency requiring legislative relief in the situation of mortgagor to mortgagee. As a rule, in times of great economic depression and great depreciation of real estate values, the mortgagee does not desire the land, and rather than take the land, would be glad to grant longer extensions on better terms than the court would be authorized to give under this law. In a great many foreclosure sales and execution sales under the present depreciated values the right of redemption is of no value, and the owner will not use it even if funds were available. And again, it may well be argued that legislation which impairs contract obligations defeats its purpose. It tends to withdraw from the borrower the funds which otherwise he might procure. Lenders will not loan their money in a state where the contract for its repayment may be impaired at the uncontrolled whim of its legislature. But, with these and other objections to the law which may be raised, we reach the conclusion that it must be sustained. In addition to the weight to be given the determination of the legislature that an economic emergency exists which demands relief, the court must take notice of other considerations. The members of the legislature come from every community of the state and from all the walks of life. They are familiar with conditions generally in every calling, occupation, profession and business in the state. Not only they, but the courts must be guided by what is common knowledge. It is common knowledge that in the last few years land values have shrunk enormously. Loans made a few years ago upon the basis of the then going values cannot possibly be replaced on the basis of present values. We [fol. 25] all know that when this law was enacted the large financial companies, which had made it their business to invest in mortgages, had ceased to do so. No bank would directly or indirectly loan on real estate mortgages. Life insurance companies, large investors in such mortgages, had even declared a moratorium as to the loan provisions of their policy contracts. The President had closed banks temporarily. The Congress, in addition to many extra-

ordinary measures looking to the relief of the economic emergency, had passed an act to suppy funds whereby mortgagors may be able within a reasonable time to refinance their mortgages or redeem from sales where the redemption has not expired. With this knowledge the court cannot well hold that the legislature had no basis in fact for the conclusion that an economic emergency existed which called for the exercise of the police power to grant relief.

But it is claimed that the emergency sought to be relieved by this law is a private matter between mortgagors and mortgagees or between owners of lands and their judgment creditors which is not of public concern, so as to justify the exercise of the state's police power. It is said the housing statutes for the cities of Washington and New York related to shelter or places to live—a matter involving public health, public morality, and public safety. Yet when those statutes came before the courts it was urged, and with perhaps as good reason as in the instant case, that they related to the private affairs between landlords and tenants in which the public was not interested. So here respondent asserts that whether title to lands pass to the mortgagees at any certain time between now and May 1, 1935, can be of no public concern. The title to lands, it is said, must rest in some one, and public welfare is not dependent upon whether it is in one individual or in another. To us it appears about as much of public concern whether numerous owners of homes and lands—providing the necessary shelter and means of livelihood—must lose them because a temporary unforeseen economic depression prevents a redemption within the time the law or contract permits, as that certain tenants who are in possession shall remain in spite of the terms of the lease because of the temporary [fol. 26] scarcity of available quarters. All would-be tenants could not be accommodated, and it would seem that so long as the landlords were willing to let all available room it was none of the public's concern who were accepted as tenants. But the courts found the emergency and its relief one of sufficient public interest to permit the police power of the state to impair the obligation of contracts. It appears to us that the economic emergency which now threatens the loss of homes and lands which furnish those in possession the necessary shelter and means of subsistence is an equally potent cause for the enactment

of chapter 339 L. 1933, under the police power of the state, that the housing emergency was in Washington and New York, which the Supreme Court of the United States deemed sufficient for the enactment of the relief statutes for those cities. We have not overlooked the fact that Mr. Justice Holmes, who spoke for the majority in Block v. Hirsch and Marcus Brown Co. v. Feldman, supra, in Pennsylvania Coal Co. v. Mahon, 260 U. S. 393, said that the cases mentioned went "to the verge" of what was permissible under the constitutional limitations. However, to us no more of public health or public welfare seems involved in the extension of the tenancy to certain tenants then in possession of shelter than in the extension of the occupation of homes, shelter, or means of subsistence to mortgagors and judgment debtors in possession. That the courts may doubt the wisdom of the law is no ground upon which to declare it invalid. It is to be presumed constitutional until the contrary appears beyond a reasonable doubt. Dunnell, Minn. Dig. §§ 1605 and 8931.

It cannot be said that this law goes beyond what is reasonable to give relief in a temporary emergency. At the mortgagor's option the right to foreclose by advertisement may be withheld or rather changed into a foreclosure by action during the operation of the law, that is, up to May 1, 1935. The right to foreclose by action remains intact. The right of redemption may be extended by the district courts to the date mentioned; but to do so the courts must determine the terms upon which such extension may be had, and during that period the rental value of the prop- [fol. 27] erty must be applied upon the payment of taxes, insurance and the debt. The condition that the mortgagor or the one obtaining the extension to redeem must meanwhile pay the rental value of the property goes far to giving compensation for the extension secured. The relief appears to be no more than what must be regarded as reasonable and just.

After this cause was submitted, on June 12, 1933, the Supreme Court of North Dakota, filed its decision in State ex rel. Cleveringa v. Klein, —— N. W. ——, holding the act of that state, extending the time of redemption from real estate mortgage foreclosure sales and real estate execution sales, unconstitutional. The court said that no matter what the emergency might be the bill of rights in

their state constitution prohibited the legislature from enacting any law impairing the obligations of private contract. And it further held that its law extending the time of redemption was forbidden by § 10 art. 1 (impairing the obligations of contract) and §1 of the 14th amendment (depriving of property without due process of law) of the Federal constitution. We notice this difference between our law and that of North Dakota; the act of North Dakota extends the time of redemption unconditionally, while under our act the mortgagor, or the one who desires to avail himself of the extension, must pay the reasonable rental value of the property, during the period of extension, to the party holding the certificate of sale. It appears to us that this provision of our law may be held to provide compensation so that there is no taking of property without due process of law. However, there can be no doubt that in some degree our act, as well as that of North Dakota, impairs the obligations of the mortgage contract, and hence runs counter to § 10 of art. 1 of the Federal Constitution. But our conclusion is that the legislature, under the police power of the state, has authority to enact laws to relieve a public emergency even though such laws temporarily impair obligations of contract, provided the impairment is no more than reasonably necessary. To that extent the police power is supreme.

The law is challenged because of its title. Attention is called to the word "inequitable" therein. The word may be disregarded. It adds nothing except to suggest that, perhaps, there may be certain foreclosures where no equity [fol. 28] whatever remains in the mortgagor, and hence these cannot be said to be inequitable so as to call for the interposition of relief. It is further claimed that the title embraces more than one subject. To us both title and act contain only one subject, viz., the extension of the time to redeem from involuntary sales of real estate under powers or under executions. All other provisions are ancillary or incidental thereto.

The law is said to contravene § 33 Art. IV of the state constitution forbidding special or class legislation. The law is general applying to the whole state. The classification extends to all mortgage foreclosure sales and execution sales that had taken place and where title had not passed prior to the enactment, and also to sales in the future dur-

ing the operation of the law—up to May 1, 1935. The temporary economic emergency affecting such mortgagors and judgment debtors justified the classification. That the law does not cover every case of owners of property who are affected by the economic depression or emergency does not condemn it. State v. Elliott, 135 Minn. 89, 160 N. W. 204; Miller v. Wilson, 236 U. S. 384.

The order is reversed.

Holt, Justice.

IN SUPREME COURT OF MINNESOTA

CONCURRING OPINION

WILSON, Chief Justice, Concurring.

I concur in all that Mr. Justice Holt has written. In addition thereto it seems to me that c. 339, L. 1933, does little more than merely transfer our statutory foreclosure by advertisement into a foreclosure by action wherein the court has equitable powers to do substantially all the things which this act authorizes the court to do. Suring State Bank v. Geise et al., —— Wis. ——, 246 N. W. 556.

This statute subjects the mortgagee to the rules of equity but it also exacts equity, in turn, from the mortgagor as a condition under which he may have a longer time in which to redeem. If the mortgagor gets an extension of time in which to redeem he is required to substantially protect the [fol. 29] mortgagee from loss by reason thereof. This he ought to do. While it temporarily protects the mortgagor from a loss of his title and a deficiency judgment it takes so little away from the mortgagee that it cannot be said to invoke an unreasonable application of the police power and under the authorities cited in State ex rel. Lichtscheidl v. Moeller, 249 Minn. 330, I am of the opinion that the statute should be sustained. Where the police power is involved we must all give. We cannot all receive only.

In my judgment every citizen should be encouraged in the spirit of achievement. If he is to be deprived of the happiness and satisfaction which he may find in achievements he becomes less useful to the community and society. Man is ambitious to better provide for those who by nature or law are dependent upon or entitled to his bounty. The law should protect him in his accumulations. It is best that the rash of ambition may develop on every person. If so

the public is interested in the solvency and prosperity of the people. It follows that it is detrimental to the public interest for our people to lose their valuable lands, improved or unimproved, at a time when the banks are closed and when it is impossible to find anyone who will make a mortgage loan. Funds are simply not available regardless of the security offered. The plight of the landowner has been enhanced because of the depreciation in land values resulting in many cases of the land being worth less than the mortgage. In such case the mortgagor can have no legislative help. Conditions are abnormal. To this situation the banks, acting under governmental requirements, have contributed by calling for liquidation to strengthen their own reserves.

As a rule mortgagees want their money, not land. Most of the real estate mortgages existing today were contracted when the general price level was about twice, and the farm values about four times, as high as today. It is estimated that mortgage foreclosures in the last three years aggregate about half a million in number. Farm mortgage debts amount to about nine billion dollars. But in comparison to the number of defaults the number of foreclosures has not [fol. 30] been large. There are authorities which in substance hold that "hard times" or "stormy weather" affords no basis for disturbing normal procedure. 3 Jones, Mortgages (8 ed. 1928) note (1933), 42 Yale Law Journal, 960. Perhaps we might find that Barnitz v. Beverly, 163 U. S. 118, so held. But, as time marched on, that court later in Block v. Hirsch, 256 U. S. 135, and Marcus Brown Co. v. Feldman, 256 U. S. 170, established a modern judicial doctrine. Indeed the opinion in Barnitz v. Beverly does not disclose the "stormy weather" then existing in Kansas and it does not show that counsel even suggested that the statute was valid under the police power. There has always been a development in judicial construction to meet new and changing conditions and Barnitz v. Beverly has been succeeded by the cases mentioned.*

"The law is progressive and expansive, adapting itself to the new relations and interests which are constantly springing up in the progress of society."

---

*As said by Mr. Chief Justice Green in Hodges v. New England Screw Company et al., 1 R. I. 312, 356:

The mortgagee is entitled to some protection during the interim of the extension and this statute gives him that protection. These laws have been enacted in several of the states and while all courts do not agree the modern judicial doctrine seems to sustain such legislation. An interesting and helpful discussion is found in 42 Yale Law Journal, 1236.

In considering what may be done under a statute we must presume that all courts will properly perform their duties.

Mortgagees have little fear from this particular statute. Few of them would wish to deprive the mortgagor of an opportunity of getting his property out of a burning house. I insist that the courts can do very little for the mortgagor under this statute. The legislature so intended. If it had provided no compensation or protection incident to the extension I would have agreed to the conclusion reached by the North Dakota court. I would then think the application of the police power was unreasonable. Our legislature acted cautiously and yet probably went as far as they could. In my judgment this statute is not a violation but a vindication of our form of constitutional government.

Wilson, C. J.

[fol. 31] IN SUPREME COURT OF MINNESOTA

CONCURRING OPINION

OLSEN, Justice, Concurring:

Chapter 339, Laws of 1933, does not appear to me to be as drastic and dangerous as stated in Justice Stone's dissenting opinion. It appears to be conceded that the legislature was confronted with an extraordinary emergency, and that, in such an emergency, the legislature may enact emergency laws vitally necessary for the welfare of the people of the state, provided it does not thereby unreasonably impair the obligations of contracts or leave the contract holders without a reasonably adequate remedy on their contracts. The law has the effect of extending the time for redemption on mortgage and execution sales on mortgage debts. If it stopped with that, the time extension until May 1, 1935, might be held unreasonable. But the act goes further and provides that, during the time so extended,

the property owner must account for and pay to the mortgage holder the income from or rental value of the property, or such part thereof as the court finds to be just and equitable. In the case of farm property it may be necessary, in some cases, to devote a part of the income or rent to the upkeep of the farm, and, in case of residence or business property, it may be necessary to apply part of the rent or income for repairs. The mortgagee, in either case, has the benefit of having the property kept up, thereby protecting his security. The act does defer entry of deficiency judgments until the expiration of the redemption period, and does provide that the court may likewise extend the period of redemption from execution sales on judgments against mortgagors on the mortgage debt, under the same conditions as on foreclosure sales. The act, as I read it, does not prevent the mortgagee from bringing suit on the notes or other evidence of indebtedness at any time.

Section 8 of the act further provides that the act shall not in any way permit any stay, postponement or extension of time such that any rights of the mortgagee might be adversely affected by a statute of limitations. See also section 5 of part 2 of the act.

The law does extend the time within which a mortgagee [fol. 32] may enforce his security, but on conditions which would seem to protect the mortgagee from any loss, and which in the end may be as beneficial to him as to the mortgagor.

It is suggested that an emergency arising from a financial and business crisis does not authorize emergency laws in the exercise of the police power, or for the protection of the public welfare, because financial and business crises are recurring events and to be anticipated; that an emergency, for legislative purposes, must be one arising from some extraordinary and unexpected catastrophe, such as floods, earthquakes, and other disturbances in nature. The reason why a flood or an earthquake may create an emergency is not because they are catastrophes of nature, but because of their widespread destruction of the property and homes of thousands of people, causing want and suffering to a great number of people and injury and danger to public welfare. The present nation wide and world wide business and financial crisis has the same results as if it were caused by flood, earthquake, or disturbance in nature. It has deprived mil-

lions of persons in this nation of their employment and means of earning a living for themselves and their families; it has destroyed the value of and the income from all property on which thousands of people depended for a living; it actually has resulted in the loss of their homes by a number of our people and threatens to result in the loss of their homes by many other people in this state; it has resulted in such widespread want and suffering among our people that private, state and municipal agencies are unable to adequately relieve the want and suffering, and congress has found it necessary to step in and attempt to remedy the situation by federal aid. Millions of the peoples' money were and are yet tied up in closed banks and in business enterprises.

To say that economic crises are to be anticipated is no good ground for making any distinction. Floods are recurring events, at least in the Ohio and Mississippi valleys. Earthquakes are recurring events, at least on the Pacific coast.

The test of an emergency is not the cause thereof but the resulting public want, suffering and danger. The cause, [fol. 33] whatever it may be, produces the emergency, but is not itself the emergency. A disease may be caused by a germ, but the germ is not the disease. The disease is the effect on the human body caused by the germ. So the present emergency is not the business and financial crisis, but the widespread loss, suffering and want of a great number of the people of this state, and the impairment of and danger to the public welfare. The situation presented to the legislature was of unprecedented magnitude, duration, and disastrous effect on the people. Prior economic disturbances in this state were of comparatively minor importance. Prior to 1880 we had comparatively few people affected by such crises. There was no widespread loss of employment or of homes. There were great unused natural resources and great opportunities for people to start anew and regain their losses. It is not so today. Such crises since that date, up to the present, have been of comparatively short duration, and not very widespread or serious. Much more could be said on the subject, but I believe what has already been stated is entirely sufficient to show that the legislature was confronted with a vital crisis, and was justified, if not required, in enacting any needed laws to

relieve the situation under its police powers, and for the public welfare of the state. In so doing, the legislature had the power to impair the obligations of contracts to a reasonable extent, provided it did not deprive the contract holder of a reasonably adequate remedy or remedies for the enforcement of his contract. Whether this law does unreasonably impair the obligations of contracts, and whether it fails to provide or preserve to the contract holder a reasonably adequate remedy or remedies for the enforcement of his contract, are the questions here presented.

The case of Barnitz v. Beverly, 163 U. S. 118, is not in conflict with these views. There was no emergency and no question of police power or general welfare legislation considered in that case. The case supports the views herein [fol. 34] expressed that, to render a law unconstitutional on the ground that it impairs contract obligations, the law must seriously impair such obligations or leave to the contract holder no adequate remedy for the enforcement of his contract.

Olsen, J., by Wilson, C. J.

IN SUPREME COURT OF MINNESOTA

CONCURRING OPINION

LORING, Justice, Concurring:

As I see the problem presented, the sole question involved is whether the police power of the state is paramount to the constitutional prohibition against the impairment of the obligations of a contract. If this were a case of first impression I should take the view that it is not. But in the New York housing cases the Supreme Court has twice said that it is. With the wisdom of such a holding, though by a divided court, it is not our function to quarrel. As long as it stands we must follow it.

That an economic emergency exists no one can deny. Whether the legislature has adopted the wisest remedy is not our problem. We may say only whether there is occasion justifying this exercise of the police power. I therefore concur.

Loring, J.

[fol. 35] IN SUPREME COURT OF MINNESOTA

DISSENTING OPINION

STONE, Justice, Dissenting:

I agree that Chapter 339, Laws 1933, is not constitutionally objectionable on account of anything contained, or not contained, in its title. But, in my judgment, as to preexisting mortgages and mortgages notes, it openly violates the due process and equal protection of law guaranties of both federal and state constitutions. All agree that it impairs the obligation of contracts. Its violation of both letter and spirit of constitutional guaranties being conceded, the effort to sustain it is based solely upon the assumption that it is, notwithstanding, legitimate exercise of police power in the emergency created by the present, long continued, world-wide depression.

The contract rights involved are the power of sale found in all Minnesota mortgages and the right to collect the debt by action. The power may be exercised through foreclosure by suit or by advertisement in the summary way provided by statute (§ 9602, et seq., Mason's Minn. St., 1927). In that connection, we have a line of decisions, establishing a rule of property, holding that the power to sell by advertisement, under the statute, is something more than mere matter of remedy. It is a substantive contract right protected by our constitutions against impairment. Heyward v. Judd, 4 Minn. 483 (Gil. 375); Goenen v. Schoeder, 8 Minn. 387 (Gil. 344); O'Brien v. Krenz, 36 Minn. 136, all in accord with Barnitz v. Beverly. 163 U. S. 118, 41 L. ed. 93.

Against that background of fact stands Chapter 339, consisting of two parts, aside from its preamble reciting the well-known adverse economic conditions said to justify the law. The purpose in both parts is to permit mortgagors or their successors, in possession of mortgaged premises, to have both foreclosure and collection of judgment, if any, and for the debt (Part I, § 3.2) stayed until May 1, 1935, or for such shorter period as a court may direct. Section 4 even extends the period of redemption under mortgage foreclosures and execution sales already had. In any case, [fol. 36] the moratorium may be "for such additional time as the court may deem just and equitable, but in no event beyond May 1, 1935." The law makes no attempt to fix

standards, or lay down rules, for the determination of what shall be "just and equitable." The only condition is that the applicant shall procure from the court "an order determining the reasonable value of the income on said property or, if the property has no income, then the reasonable rental value of the property involved in such sale, and directing and requiring such morgagor or judgment debtor to pay all *or a reasonable part* of such income or rental value in or toward the payment of taxes, insurance, interest, mortgage or judgment indebtedness at such times and in such manner as shall be fixed and determined and ordered by the court."

So, during the two year period ending May 1, 1935, the law authorizes judges to make new contracts and substitute the same for the originals. They shall be "just and equitable"; otherwise the whole matter is left to the untrammeled discretion of the judge. The mortgagee, no matter how indulgent he has been nor how long past due his debt, cannot even get all the income or rental value of the mortgaged property if some judge determines that it would be "reasonable" under the circumstances for him to do with less.

Toward the end of § 4 there is open invasion of judicial function by the law-making power, for it is declared that the time of redemption from recent foreclosures even though by action, and from recent execution sales, shall be "and the same hereby is extended to a date 30 days after the passage of this act," so that the debtor, if he wishes, may apply for and procure the legislative modification of a judicial decree which the law substantially directs. Finally, § 4 suspends until May 1, 1935, the mortgagee's right to a deficiency judgment. At least that right is postponed "until the period or redemption * * * if extended under the provisions of this act, has expired."

The framers of the act, doubtless sensing that they were covering a dangerously wide extent of territory by part one, enacted part two. Without going into its details, it is similar to part one, except that it applies "only to real [fol. 37] estate occupied as a home exclusively by the person seeking relief or persons dependent upon him, and to farm lands (area not limited) used by the person seeking relief as his principal means of furnishing necessary support to such person, his family and dependents." It applies

only to cases not entitled to relief "under some valid provision of part one."

In the majority opinion no distinction is made between parts one and two. Part one sustained, there is small occasion to discuss part two. But so that I may not be misunderstood, let me say that my strong inclination would be to uphold a law, if we had such a one, and nothing more, subjecting for the period of the present emergency all sales of mortgaged property by advertisement to the closest judicial scrutiny, in order, as far as possible, to protect the equities of home owners, particularly the operating owners of farms, and temper the oppression and injustice some times perpetrated by mortgagees of the Shylock variety now as always ready to take advantage of the letter both of the law and their bond. But part two of the act goes far beyond that. Equally with part one, it makes the whole subject a matter of judicial grace rather than judicial duty.

Going back to part one, I cannot find ground for declaring that mortgaged real estate of all kinds, and whatever its condition or use, is affected by public interest, even in the present emergency, so as to justify the exercise of police power in the manner attempted. As it stands, the law applies with the same force to vacant, idle, and even "wild" land as it does to any other. It embraces the very large acreage in this state of mortgaged lands which have been for some time and will doubtless long remain the subject of speculation and in the own-rship, not of home owners or farmers, but of mere speculators. It applies as much to apartment-house properties, office buildings, and other like investment properties, not occupied or used by the owners, nor intended to be so used, but which are owned and dealt in as investment properties or for sheer speculation. How it comes that the public has any interest in staying fore- [fol. 38] closures on such properties is beyond my comprehension. In many instances, public interest would be better served by foreclosure, with the consequent squeezing out of speculative interests and inflated values.

It is no answer to say that, when a court is applied to in cases of mortgages on other than home, farm, or business property of the occupant, foreclosure may and doubtless will be permitted to proceed. That is possible, but the law does not demand it. Aside from its equivocal provisions concerning ascertainment of rent or rental value for benefit

of the mortgagee, the law requires nothing for the declaration that judges may, notwithstanding the law, decree foreclosure if, in their judgment, equitable. Constitutional guaranties are not satisfied by statutes which make compliance mere matter of grace rather than demandable right. "The constitutionality of a law is to be tested not by what has been done under it, but by what may by its authority be done." Stuart v. Palmer, 74 N. Y. 183. "The law itself must save the rights of the parties." Gove v. County of Murray, 147 Minn. 24, 179 N. W. 569.

The law permits outright repudiation for the time being and until May 31, 1935, of contract obligation. The limitation is a suggestion by the legislature of 1933 to its successor of 1935 that the repudiation be extended for another two years or more, as the law makers may then decide.

Repudiation of private and public contract debts was the main factor, the most alarming manifestation of chaos and near anarchy, which prevailed increasingly in the American colonies from the end of the Revolution in 1781 to the going into effect of the constitution in 1788. It was the whole animus of Shays' Rebellion in Massachusetts, a disturbance which, although localized, was most alarming. It was distinctly a rebellion of militant debtors against their creditors, and against courts and the judges thereof sworn to enforce all law, including the law of contracts, "Against [fol. 39] lawyers and courts the strongest resentments were manifested; and to such a dangerous extent were these dispositions indulged, that, in many instances, tumultuous assemblages of people arrested the course of law, and restrained the judges from proceeding in the execution of their duty." (1 Beveridge, Marshall, 299, quoting 2 Marshall, Life of Washington, 117.) We need not go far in recent local experience for phenomena exactly parallel. Our constitutional system was the cure of the one condition. Surely its abandonment cannot remedy the other. Once the law breaks down, it becomes so much the easier to break it down in other cases where the plainest right requires its enforcement. That process does not continue long before all laws go to smash.

If, in economic emergency, the legislature may suspend constitutional guaranties, and the courts may sustain the suspension whenever they think there is reasonable ground and that the suspension does not go too far, we have at

once government by proclamation. There will be a pronouncement for each case instead of one law for all. The system will be none-the-less objectionable because the proclamation emanates from judicial rather than executive sources. It was government by proclamation that lost Charles I his head. It was one of the dangers that the framers of the constitution sought to save us from in perpetuity, in good times and bad, by inviolable, written guaranties we now hold may be set aside, whenever the legislature feels so inclined and the courts be persuaded to agree that the feeling is justified.

Economic arguments have been much stressed, and very properly, for the economic welfare of our people is the one desideratum of the law. But to my notion that welfare will be hindered ultimately rather than helped by such laws as Chapter 339. Our western country was largely built into what it is on money borrowed—some from our own people, but much from lenders in other states and overseas. Just now we are sadly in need of rebuilding, and we must rebuild largely on borrowings to be secured by mortgages on our real estate. Just how or from whom can we borrow if we serve notice, as this law does, that foreclosure of mortgages may be deferred indefinitely at the pleasure of officials [fol. 40] owing their office to the favor of the debtors? In my judgment economic considerations alone forbid the debtors themselves to resort to repudiation. Such resort will be harmful in proportion as the repudiation takes the form of law and is confirmed by judicial action. That, indeed, would not only impair the obligations of the involved contracts; but would also destroy the confidence of people, even our own people, in the disposition of our community to perform its contracts. Confidence gone in the contract performing disposition of any community its prosperity is at an end, for it has divorced itself from that without which business cannot go on—the confidence of people generally in the disposition of people generally faithfully to perform their contractual obligations to the best of their ability. Compare Farrington v. Tennessee, 95 U. S. 679, 24 L. ed. 558.

Mortgages on real estate are held very largely by trustees and quasi-trustees. According to the best figures available, (those for all our states, of the U. S. Bureau of Agricultural Economics, as of January, 1928) 10.8 per centum

of them are held by commercial and savings banks, 19.1 per centum by the federal and joint Stock Land Banks, and 22.9 per centum by insurance companies. Both banks and insurance companies are quasi-trustees, handling in the latter case the savings of the people put aside for the protection of the insured and their dependents, and in the former the savings and working capital of business and the people generally. In 1928, 29.6 per centum of real estate mortgages were held by individuals; 14.2 per centum by farmers, and 10.6 per centum by retired farmers, that is, by the men and women who, to a very large degree, made our farms what they are and put into them by way of improvement and cultivation a goodly portion of whatever intrinsic value they have. Discrimination against them now would indeed be a poor sort of encouragement to farmers who naturally must and do look forward to the times when advancing years will compel retirement. Their ambition and their hope for the future will be reduced in proportion as their confidence in their ability to retire on the security, in part, of a mortgage on the home farm is diminished.

[fol. 41] In 1930 (Farm Mortgage Foreclosures in Minnesota, by E. C. Johnson, University Farm, St. Paul, December, 1932) 53.8 per centum of Minnesota owner-operated farms were reported as mortgaged, leaving 46.2 per centum clear. A substantial portion of mortgaged farms have an incumbrance so well within the owner's capacity to pay that foreclosure is not threatened. Those owners, together with the owners of the clear farms, make up much more than half our farmers living on and operating their own farms. They are entitled to consideration. They are a highly important part of the public, in the interest of which this law professes to operate. That these farmers are economically safe shows that they, by and large, are the best farmers. But they need borrowing power, and what they had is greatly lessened by this law. Sooner or later most of them will desire to sell, but their ability to do so, and the value of their land are reduced by this law.

Ordinarily when a farm is sold a purchase-money mortgage is taken for a goodly proportion of the purchase price. To the extent that the right of the mortgagee to enforce such a mortgage is impaired, a serious obstacle is interposed to renewed movement and consequent increase in value of farm lands. The same consideration applies,

but in less degree, to urban real estate. It is no answer to say that lands may be sold on executory contract, the vendor retaining the legal title—no answer because if the legislature may impair the obligation of the covenants of a mortgage it may, by the same token and to the same extent, destroy those of the vendee in a contract of sale.

The District of Columbia and New York Housing Acts sustained in Block v. Hirsh, 256 U. S. 135, 65 L. ed. 865; Brown Holding Co. v. Feldman, 256 U. S. 170, 65 L. ed. 877; Levy Leasing Co. v. Siegel, 258 U. S. 242, 66 L. ed. 595; Chastleton Corp. v. Sinclair, 264 U. S. 543, 67 L. ed. 841, upon the authority of which the majority opinion stands, were laws providing for the fixing of reasonable rates for the public's use of property, its use of which was necessary at the time being. We have now no scarcity of human [fol. 42] habitations, rural or urban. Our present difficulty is just the opposite. Everywhere there is vacancy, more of it probably in our cities than in the country.

As said in a later case, the decisions of the Supreme Court in these rent cases went to the very verge of the law. Pa. Coal Co. v. Mahen 260 U. S. 393, 416, 67 L. ed. 322. It was suggested in Block v. Hirsh supra, that the United States, in the emergency which followed the World War, was doing only what other countries were doing to protect their people. That would have been apropos if the war powers of Congress or the states had been invoked. They were not. The constitutional guaranties against impairment of contract obligation, and of due process and equal protection, were simply contracted and the police power stretched, by a bare majority of the court, to sustain the laws. With the utmost deference, I submit that even to suggest that our governments may do anything that old world governments may do is to forget that with us all government (not the executive alone, as in England) is restrained by constitutions, the very purpose of which is to bar forever many things which formerly were done by governments, to the horror of mankind, the oppression of their people and the destruction of popular rights.

If, as is now contended, the police power may be used as a cover under which the legislative branch of government may, at its will, ignore constitutional guaranties, we have nothing left of our constitutions but parchments of mere historical interest; the Bill of Rights becomes a mere

scrap of paper. If a contract may be impaired, (directly and avowedly as the sole purpose, rather than incidentally as the result of accomplishing some other in the public interest as in the housing law cases) and due process or equal protection similarly denied, at the will of any legislature, it is just as logical to hold that, in great emergency, bills of attainder may be passed and citizens again hanged, drawn and quartered whenever the law-making power so wills. It is no answer to say that mankind has advanced beyond all that. There may be doubt on that point. Our constitutions were framed by men and adopted by people who knew (what so many are prone to forget) that the [fols. 43-46] interests of the masses, particularly those least able to protect themselves, cannot safely be trusted to any government, even our own, unless restrained by the inhibitions which characterize all our constitutions, state and federal. Imprisonment for debt is explicitly prohibited by our state constitution (Art. 1, § 12). But in 1887 the legislature of this very state enacted such a measure. If it had not been for the decision here in Meyer v. Berlandi, 39 Minn. 438, many of those engaged in the building trades might have become victims of the law. It had not occurred to any one then that the police power doctrine was expansible to infinity.

No thinking man, conscious of the changes wrought and yet to be wrought by progress, can consider our constitutions the ultimate of perfection. They too must change from time to time in adaptation to accomplished facts of evolution of peoples and government. However, they express some principles which promise to be the ultimate concepts for the restraint of government in the interests of the governed. While so restraining government as to leave a high degree of freedom to individualism, they yet leave in government enough power to prevent individualism from becoming too rugged for the welfare of the masses. They may be amended or entirely done away with if the people so desire. But so long as they stand, no higher duty rests upon government and citizens than obedience to them. To the extent that they need change, it should be brought about openly and honestly by amendment, rather than by nullification. There can be no more effective and dangerous cover for nullification than the acquiescence of courts in legislation plainly violative of constitutional guaranties.

Our experience under the eighteenth amendment demonstrates that the nation as a whole can find no better formula for prolific incubation of disregard of all law, social disorganization, and moral deterioration than the general disregard of constitutional mandates.

Considering as I do that Chapter 339, Laws 1933, is violative of constitutional guaranties in the respects indicated, and finding myself unable to come to any other conclusion, I respectfully dissent from the decision upholding it.

Stone, J.

[fol. 47] In District Court of Hennepin County

Statement of Evidence

The above entitled matter came on for hearing before the Hon. Mathias Baldwin, one of the judges of said court, on the morning of July 20, 1933. Messrs. Stiles & Stiles appeared in behalf of petitioners. Messrs. Strong, Myers & Covell appeared in behalf of respondent.

Thereupon the following proceedings were had:

Mr. Stiles: Petitioners offer in evidence Petitioners' Exhibit A.

Respondent's Objection to Evidence

Mr. Covell: The respondent, Home Building and Loan Association, objects to the introduction of any evidence under the petition and under this proceeding, on the following grounds, to-wit:

1. That Chapter 339, Minnesota Laws 1933 is in violation of the contract clause of the Constitution of the United States, Art. I, Sec. 10: "No state shall * * * pass any * * * law impairing the obligation of contracts * * *."

2. That said law is in violation of the Amendment to the Constitution of the United States, Art. XIV, in that it violates:

(a) "* * * nor shall any state deprive any person of * * * property without due process of law," and

[fol. 48] (b) "* * * nor (shall any state) deny to any person within its jurisdiction the equal protection of the laws."

That said claims were made by the respondent at the former hearing in this case and before the Supreme Court and notwithstanding the action of the Supreme Court of the State of Minnesota in reversing the order of the trial court sustaining said claims, that nevertheless and for the purpose of avoiding any doubt as to the respondent's claims of such unconstitutionality, or non-waiver thereof after such action by the Supreme Court, the respondent now reports and urges on this court his claims of the unconstitutionality of Chapter 339 of the Laws of 1933, as aforesaid.

The respondent claims further that said Chapter 339 of the Laws of 1933 is invalid and null and void for all purposes, because:

(a) Chapter 339 does not establish and define the standards or rules by which the Courts are to be guided in the application of the provisions of said Act to the cases which might arise under it, and that the Act is, therefore, too indefinite and uncertain and is impossible of uniform and equal application in the many cases which might arise throughout the State and before different judges; and

(b) Chapter 339 is an attempt by the Legislature to delegate legislative powers to the Courts; and

(c) Chapter 339 is an attempt by the Legislature to invade the province of the Courts.

[fols. 49-74] The objections were overruled.

Exception by respondent.

[fol. 75] Mr. Stiles: Petitioners rest.

MOTION TO DISMISS

Mr. Covell: The respondent moves to dismiss the petition, upon all of the grounds of unconstitutionality of the statute that were recited as grounds of objection to the introduction of any evidence at the commencement of the trial.

Mr. Stiles: I might perhaps add a statement or admission by way of consent in the record, on behalf of the petitioners, before technically and finally resting, which statement is to this effect, your Honor: that the petitioners, being solely interested in the preservation of their rights in their home, in this action, and being desirous of keeping within any construction that may fairly be placed upon the

[fols. 76-84] language of our Supreme Court in its opinion recently handed down in this case, (249 N. W. 334) do now consent to accept, and request the Court to find and make an order requiring payment by them, at such times and in such places as the Court may be advised, of such an amount as the Court shall find to be the full amount of the fair and reasonable rental value of the premises.

The Court: Are you going to offer evidence, Mr. Covell?

Mr. Covell: Yes, your Honor.

The Court: Then I think that after the evidence is all in is the proper time for that.

Mr. Covell: We move to dismiss the petition, on the grounds stated.

The Court: Regretfully, denied.

Exception by respondent.

[fols. 85-88] Motion to Dismiss

Mr. Covell: I again move to dismiss the petition, on the ground that the statute under which the proceeding is brought is unconstitutional, for all the reasons stated in the objections to the introduction of any evidence; and on the additional ground that the petitioners have failed to make out a case for relief under Chapter 339 of the Session Laws of 1933.

The Court: Motion denied.

Exception by respondent.

[fol. 89] In District Court of Hennepin County

Findings of Fact

The above entitled matter came on for hearing and trial before the undersigned, one of the judges of said court, on Thursday, the 20th day of July, 1933, upon the application and petition of Rosella Blaisdell and John H. Blaisdell, to extend the period for redemption from the foreclosure of the mortgage, all as hereinafter described, and for and on motion for an order determining the reasonable value of the income on said property, or if the property has no income, then the reasonable rental value of the property involved in such foreclosure sale, and directing and requiring

such mortgagors, who are the said petitioners, to pay all or a reasonable part of such income or rental value in or toward the payment of taxes, insurance, interest and mortgage indebtedness, at such times and in such manner as may be fixed, determined and ordered by this court. Mr. George C. Stiles appeared in support of said petition, and Strong, Myers and Covell appeared in opposition thereto, and the Court having heard the evidence adduced by said parties and being fully advised in the premises, and on all the files, records and proceedings herein, makes the following:

FINDINGS OF FACT

1. That on and prior to August 1st, 1928, the said petitioners, John H. Blaisdell and Rosella Blaisdell, were the owners of the following described real estate situated in the County of Hennepin and State of Minnesota, to-wit:

Lot Eight (8), Block Twenty (20), Wilson, Bell and Wagner's Addition to Minneapolis, according to the plat thereof on file and of record in the office of the Register of Deeds in and for said Hennepin County.

2. That at the times hereinafter mentioned, the Home Building and Loan Association was and now is a corporation organized and existing under and by virtue of the laws of the State of Minnesota.

3. That on August 1st, 1928, to secure a loan of money then made by the said Home Building and Loan Association, the said petitioners, Rosella Blaisdell and John H. Blaisdell, the said Rosella Blaisdell and John H. Blaisdell executed and delivered a written mortgage of said above [fol. 90] described real estate to said Home Building and Loan Association; that said mortgage contained a power of sale in the conventional form as used in the State of Minnesota which was by its terms operative in case of a default in the performance of the terms and conditions of said mortgage or in the payment of said loan by the said Blaisdells and entitled and authorized the said Home Building and Loan Association by its terms to exercise said power of sale in a foreclosure by advertisement pursuant to the statutes of Minnesota then and now in force and effect; that said mortgage was recorded in the office of the Register

of Deeds in Hennepin County, Minnesota, on the 2nd day of August, 1928, in Book 1590 of Mortgages, on Page 583.

4. That thereafter and on May 2nd, 1932, default existed in the performance of the terms and conditions of said mortgage and in the payment of the loan secured by said mortgage by the said Blaisdells and pursuant to said power of sale, the said Home Building and Loan Association did, on May 2nd, 1932, duly foreclose said mortgage by advertisement pursuant to the power of sale hereinbefore described and caused the said premises to be struck off and bid in by and sold to the said Home Building and Loan Association for the sum of Three thousand seven hundred and 98/100 ($3700.98) Dollars on said May 2nd, 1932, and that the Sheriff of Hennepin County thereupon issued, executed and delivered his certificate of sale of said premises pursuant to said mortgage foreclosure sale to the said Home Building and Loan Association for the sum of Thirty-seven hundred and 98/100 Dollars ($3700.98) covering all of said premises and which sheriff's certificate of sale was recorded May 2nd, 1932, in the office of the Register of Deeds in Book 1255 of Deeds, on Page 297.

5. That the said Home Building and Loan Association is still the owner and holder of said sheriff's certificate and that no part of the said debt evidenced thereby or the purchase price of the premises has ever been paid to the said Home Building and Loan Association by the said Blaisdells or by any person on their behalf or by any other person or in any other manner whatsoever and that said sheriff's certificate was valid and operative as a certificate of sale in the foreclosure of said mortgage by advertisement, all as provided by the statutes of the State of Minnesota.

[fol. 91] 6. That a true copy of said mortgage hereinbefore described is marked Exhibit "A" and made a part hereof as if fully set forth herein.

7. That said foreclosure sale was in all respects valid and legal and that the time to redeem therefrom would expire on May 2nd, 1933, under the laws of the State of Minnesota as in effect at the time of the making of said mortgage and at the time of said sale.

8. That within Thirty (30) days after April 18th, 1933, and before April 28th, 1933, the petitioners herein served

their notice of motion and petition on file in this proceeding for an extension of the time to redeem from said mortgage foreclosure sale and for an order fixing the terms upon which said extension should be granted, all as provided in Chapter 339 of the Session Laws of Minnesota for 1933 and that this proceeding is brought and maintained under said Chapter 339.

9. That at the time of the making of said mortgage and at the present time, the said premises consist of a plot of ground approximately Fifty by One hundred fifty feet in size in the closely built-up portions of the city of Minneapolis and was improved by a two-car garage, together with a building now approximately Eighteen (18) years old, of frame construction, two stories in height and with city water, sewer, electric light and gas connections, and that said building is divided into fourteen rooms; that the petitioners were in 1928 and still are husband and wife and still occupy the said premises as their homestead; that eleven rooms in said house were in 1928 and still are maintained by them for rental to others; that the petitioners occupy three rooms in said house and the balance of said rooms are offered for rental to others.

10. That the reasonable value of the income on said property and the reasonable rental value of the said property involved in said sale, is the sum of Forty Dollars ($40.00) per month.

11. That the bid made by the said Home Building and Loan Association on said mortgage foreclosure sale and the purchase price for which said premises were sold by the sheriff in said sale were and are the full amount of the mortgage indebtedness due on said mortgage at the time of said sale and that no deficiency in said mortgage indebtedness existed after said sale.

[fol. 92] 12. That the reasonable present market value of said premises is Six thousand Dollars ($6,000.00).

13. That at the time of the making of said mortgage, the petitioner, John H. Blaisdell, was employed as a switchman at a salary of approximately Two hundred nine and no/100 Dollars ($209.00) per month; that at the present time the said John H. Blaisdell is employed as a policeman

by the City of Minneapolis, Minnesota, at a salary of One Hundred sixty-two and 80/100 Dollars ($162.80) per month.

14. That the taxes on said premises for 1928 and 1929 have never been paid by said petitioners and were paid by the said Home Building and Loan Association prior to said mortgage foreclosure sale and are included in the amount of its bid and the purchase price of said premises on said mortgage foreclosure sale; that said 1928 and 1929 taxes amounted to Five hundred eight and 97/100 Dollars ($508.97), with penalties and interest at the time of said foreclosure sale; that the taxes on said premises for 1931 in the sum of Two hundred six and 17/100 Dollars ($206.17) and for 1932 in the sum of Two hundred thirty-three and 05/100 Dollars ($233.05) have never been paid by the said petitioners and that the said Home Building and Loan Association has, since said foreclosure sale, paid the following amounts, which are additional liens against said premises in addition to the purchase price on said foreclosure sale, and interest thereon, to-wit:

1931 taxes	$206.17
First half 1932 taxes	116.53
Fire insurance premiums on said premises	45.25
Total	$367.95

and that the total of said items, including the purchase price at said mortgage foreclosure sale, but exclusive of interest thereon from said date, is the sum of Four thousand fifty-six and 39/100 Dollars ($4,056.39); that since January 1st, 1932, the petitioners have paid only the following amounts on said mortgage indebtedness, or for any other purpose, to the said Home Building and Loan Association, to-wit:

January 11th, 1932	$ 41.80
February 12th, 1932	41.80
February 29th, 1932	41.80
Total	$125.40

all in the year 1932, and all prior to said foreclosure sale, [fol. 93] and that no payments of any kind or nature what-

soever on account of said mortgage indebtedness or taxes thereon have been paid since said February 29th, 1932.

15. That in view of all of the circumstances, the order hereinafter made appears to the court to be just and equitable within the meaning of Chapter 339 of the Session Laws of Minnesota for 1933.

16. That since the beginning of the present depression, real estate rentals generally have depreciated and are now less than they were in 1929, and that there is no shortage of housing in the City of Minneapolis.

[fol. 94] IN DISTRICT COURT OF HENNEPIN COUNTY

JUDGMENT AND DECREE—July 27, 1933

The above entitled action having been regularly placed upon the calendar of the above named court for the September A. D. 1932 General Term thereof, came on for trial before the court on the 20th day of July A. D. 1933; and the court, after hearing the evidence adduced at said trial and being fully advised in the premises, did on the 21st day of July A. D. 1933 duly make and file its findings and order herein; and thereafter on the 27th day of July A. D. 1933 duly make and file its order amending said order.

Now, pursuant to said orders and on motion of Messrs. Strong, Myers & Covell, attorneys for respondent, it is hereby adjudged and decreed:

1. That the reasonable value of the income on the real estate situated in the County of Hennepin and State of Minnesota, described as follows, to-wit:

Lot Eight (8), Block Twenty (20), Wilson, Bell and Wagner's Addition to Minneapolis, according to the plat thereof on file and of record in the office of the Register of Deeds in and for said Hennepin County,

and the reasonable rental value of the property involved in the mortgage foreclosure sale held on May 2nd, 1932, is the sum of Forty Dollars ($40.00) per month.

2. That the period of redemption from the mortgage foreclosure sale of the mortgage recorded in Book 1590 of Mort-

gages, at page 583, in the office of the Register of Deeds of Hennepin County, Minnesota, and the foreclosure record of which is recorded in the office of said Register of Deeds in Book 1255 of Deeds, on page 297, be and the same hereby is extended to May 1st, 1935, subject, however, to the terms and conditions hereinafter set forth and ordered.

3. That the petitioners, Rosella Blaisdell and John H. Blaisdell, are directed and required to pay to the Home Building and Loan Association the sum of Forty Dollars ($40.00) per month during such extended period of redemption from May 2nd, 1933, to May 1st, 1935, in the following manner and at the following times, to wit:

Forty Dollars ($40.00) on August 2nd, 1933; Forty Dollars ($40.00) on August 16th, 1933; Forty Dollars ($40.00) on September 2nd, 1933; Forty Dollars ($40.00) on September 16th, 1933; Forty Dollars ($40.00) on October 2nd, [Fols. 95 & 96] 1933; Forty Dollars ($40.00) on October 16th, 1933, and Forty Dollars ($40.00) on the 2nd day of each calendar month thereafter during such extended period of redemption, all to be paid toward the payment of taxes, insurance, interest and mortgage indebtedness on the premises involved in said mortgage foreclosure sale, and in case said Home Building and Loan Association shall fail or refuse to accept said sum or sums or any of them upon a tender thereof, then said petitioners shall deposit said sums with the Clerk of the District Court of Hennepin County, Minnesota, for the benefit of said Home Building and Loan Association and such deposit shall be deemed to be a compliance with the terms of this judgment and decree by the said Blaisdells.

By the Court:

Geo. H. Hemperley, Clerk of District Court. By _____, Deputy.

[fols. 97-100] [File endorsement omitted]

In Supreme Court of Minnesota, Hennepin County

Per Curiam

John H. Blaisdell et al., Respondents,

vs.

Home Building & Loan Association, Appellant

Syllabus

Chap. 339 L. 1933 does not violate the constitution of the United States or of the state of Minnesota, and the appeal is ruled by the decision filed July 7, 1933, in a former appeal in this case.

Opinion Filed July 27, 1933

Per Curiam:

Defendant appeals from the judgment entered upon the finding of fact and conclusions of law. The case was here on an appeal by the plaintiffs, or petitioners, from the order denying a new trial wherein the decision was filed on July 7, 1933 (not yet reported). This appeal attacks Chap. 339 L. 1933 as violation of the same provisions of the Constitution of the United States and of the Constitution of this state as in the previous appeal, the parties having submitted the case on the same briefs. We are of the opinion that the decision in the first appeal rules this appeal and on the authority thereof the judgment is

Affirmed.

[fol. 101] Supreme Court of the United States, October Term, 1933

[Title omitted]

Order Allowing Appeal

The appellant in the above entitled suit, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled suit (sub. nom. John H. Blaisdell and Rosella Blaisdell, his wife, Petitioners-Appellants,

vs. Home Building and Loan Association, Respondent, Nos. 29615 and 29711) by the Supreme Court of the State of Minnesota on the 28th day of July, 1933, and from each and every part thereof and having presented and filed its Petition for Appeal, Assignment of Errors, Prayer for Reversal, and Statement of Jurisdiction, pursuant to the statutes and rules of the Supreme Court of the United States in such case made and provided:

It is now here ordered that an appeal be, and the same is hereby allowed to the Supreme Court of the United States from the Supreme Court of the State of Minnesota in the above entitled cause, as provided by law, and

It is further ordered, that the clerk of the Supreme Court of the State of Minnesota shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the clerk of the Supreme [fols. 102-115] Court of the United States, so that he shall have the same within forty (40) days of this date.

Dated August 11, 1933.

S. B. Wilson, Chief Justice, Supreme Court of Minnesota.

(Admission of Service.)

[fol. 116] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON, AND STIPULATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed Aug. 21, 1933

Comes now the appellant in the above entitled case and states that the points upon which it intends to rely in this Court, in this case, are as follows:

Point I

The Supreme Court of Minnesota erred in sustaining the validity of Chapter 339 of the Laws of Minnesota, 1933, against the contention by appellant that the same is repugnant to the contract clause, Art. I, Sec. 10 of the United States Constitution.

Point II

The Supreme Court of Minnesota erred in sustaining the validity of Chapter 339 of the Laws of Minnesota, 1933,

against the contention by appellant that the same is repugnant to the due process clause of Amendment XIV of the United States Constitution.

Point III

The Supreme Court of Minnesota erred in sustaining the validity of Chapter 339 of the Laws of Minnesota, 1933, against the contention by appellant that the same is repugnant to the equal protection of the laws clause of Amend-
[fols. 117 & 118] ment XIV of the United States Constitution.

And the appellant further represents that the whole of the record as agreed between counsel in the stipulation as to the printing of record herein is necessary for the consideration of the case.

Dated Aug. 14th, 1933.

Alfred W. Bowen, Counsel for Appellant.

(Admission of Service.)

[fol. 119] STIPULATION AS TO PRINTING RECORD.

It is stipulated and agreed by and between Alfred W. Bowen, Esq., counsel for appellant, and George T. Simpson, Esq., counsel for appellees, that in order to save expense in the printing of the record herein, the following portions thereof, being sufficient to show the errors complained of, shall be printed, and no more, to-wit:

1. Amended Notice of Motion. (r. 1, 2.)
2. Amended Petition. (r. 3-5 inc.)
3. Bill of Exception—Objections to the Introduction of Evidence—and Motion to Dismiss. (r. 6, 7.)
4. Order (District Court) Sustaining Objections and Dismission Petition. (r. 8.)
5. Exhibit "A." (r. 9.)
6. Notice of Motion for New Trial. (r. 10.)
7. Order Denying New Trial and Memorandum. (r. 11-16 inc.)
8. Transcript of Record, the following portions only to be printed:

All of page 47, except the title; all of page 48 and the first two lines of page 49; the last twelve lines on page 75 and the first fourteen lines on page 76; lines five to twelve,

inclusive, on page 85. (Note. These portions have been marked with red pencil in the certified transcript.)

[fols. 120 & 121] 9. Findings of Fact. (r. 89-93 inc.)
10. Judgment (District Court). (r. 94, 95.)
11 Judgment (Supreme Court). (r. 97.)
Dated August 14th, 1933.

Alfred W. Bowen, Counsel for Appellant. George T. Simpson, Counsel for Appellees.

O. K. Stiles.

[fol. 122] [File endorsement omitted.]

Endorsed on cover: File No. 37-973. Minnesota Supreme Court. Term No. 370. Home Building and Loan Association, Appellant, vs. John H. Blaisdell and Rosella Blaisdell, his wife. Filed August 21, 1933. No. 370 O. T. 1933.

INDEX.

Subject Index.

	Page
Statement as to jurisdiction:	
Statutory provision sustaining jurisdiction	1
Statute of Minnesota validity of which is involved	2
Date of decree and date of application for appeal	2
Nature of case and ruling below	2
Cases believed to sustain the jurisdiction	5
Motion to advance:	
Statement of matter involved	7
Reasons relied upon	8

Table of Cases Cited.

Advance Rumely T. Co. v. Jackson, 287 U. S. 283, 53 S. Ct. 133, 77 L. Ed. 192	6
Anglo-Chilean N. S. Corp. v. Alabama, 288 U. S. 218, 53 S. Ct. 373, 77 L. Ed. 451	6
Appleby v. City of New York, 271 U. S. 364, 46 S. Ct. 569, 70 L. Ed. 992	6
Consolidated Textile Corp. v. Gregory, 289 U. S. 85, 53 S. Ct. 529, 77 L. Ed. 750	6
Fiske v. Stone, 274 U. S. 380, 47 S. Ct. 655, 71 L. Ed. 1108	6
Levy Leasing Co. v. Siegel, 258 U. S. 242, 42 S. Ct. 289, 56 L. Ed. 595	6
Ligget Co. v. Lee, 288 U. S. 517, 53 S. Ct. 481, 77 L. Ed. 553	6
Louisiana R. & N. Co. v. Behrman, 235 U. S. 164, 35 S. Ct. 62, 59 L. Ed. 175	5
Miller v. Schoene, 276 U. S. 272, 48 S. Ct. 246, 72 L. Ed. 568	6
New York E. L. Co. v. Empire City Subway Co., 235 U. S. 179, 35 S. Ct. 72, 59 L. Ed. 184	6
New York v. Zimmerman, 278 U. S. 63, 49 S. Ct. 61, 73 L. Ed. 184	6
Shriver v. Woodbine Sav. Bank, 285 U. S. 467, 52 S. Ct. 430, 76 L. Ed. 884	6
State v. Moeller, 249 N. W. 330	10
Young v. Masci, 289 U. S. 253, 53 S. Ct. 599, 77 L. Ed. 767	6

Statutes Cited.

Constitution of the United States, Article I, Sec. 10	2, 5
Fourteenth Amendment	2, 5, 8
Judicial Code, Sec. 237, as amended (28 U. S. C. A. 344)	1
Laws of Minnesota, 1933, Chap. 339, p. 514	2, 3, 5, 8, 9, 11, 12, 13

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933

No. 370

HOME BUILDING AND LOAN ASSOCIATION,
A CORPORATION, APPELLANT,

vs.

JOHN H. BLAISDELL AND ROSELLA BLAISDELL,
HIS WIFE, APPELLEES.

STATEMENT AS TO JURISDICTION ON APPEAL.

May it please the Court:

The appellant, Home Building and Loan Association, a corporation, in support of the jurisdiction of this Court to review the above entitled cause on appeal, respectfully represents:

A.

Statutory Provision Sustaining Jurisdiction.

Section 237 of the Judicial Code, as amended (28 U. S. C. A., Sec. 344) provides in part as follows:

"SEC. 237 (amended). Appellate Jurisdiction of decrees of State Courts.—

"(*a*) A final judgment or decree in any suit in the highest court of a State in which a decision could be

had, where is drawn in question * * * the validity of a statute of any State on the ground of its being repugnant to the Constitution * * * of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error [now appeal]. * * *"

B.

Statute Involved.

The statute so drawn in question herein, is Chapter 339 Laws of Minnesota, 1933, page 514. Appellant claims that said statute is repugnant to and violates the following provisions of the Constitution of the United States: (1) The contract clause, Art. I, Sec. 10; (2) The due process clause of Amendment XIV; and (3) The equal protection of the laws clause of Amendment XIV.

C.

Date of Decree and Date of Application for Appeal.

The decree sought to be reviewed was entered by the Supreme Court of the State of Minnesota on the 28th day of July, 1933 (R. 97)*, affirmed per curiam on basis of prior decision, — Minn. —, 249 N. W. 334.

The application for appeal was presented on the 11th day of August, 1933 (R. 99).

D.

Nature of Case and Ruling Below.

The record shows conclusively both by the pleadings and stipulation of counsel, the following facts (R. 89 to 93; see

*Footnote.—All references to the record are to the pages of the certified unprinted record prepared for the Clerk of the Supreme Court of the United States by the Clerk of the Supreme Court of Minnesota and on file with the Clerk of this Court. The record has not yet been printed.

also R. 3 to 5, 19–20): That appellant is a corporation organized and existing under the laws of Minnesota. That on April 18, 1933, when Chapter 339, laws of Minnesota, 1933, page 514, was enacted and approved, the parties to this appeal were parties to a lawful, subsisting contract arising out of a loan of money by appellant to appellees. The loan was secured by a mortgage on certain real estate in Minneapolis owned by appellees, which is stipulated to be worth Six Thousand Dollars ($6,000) at the present time (R. 92). The mortgage was in form, that commonly used in Minnesota, and contained the usual provisions for foreclosure by advertisement, and provided also, by operation of law, for a redemption period of one year from date of such foreclosure sale, if any. That the mortgage had been duly foreclosed on May 2, 1932, and sold on execution to appellant, for the full sum of its loan, interest and costs, viz: Thirty-seven Hundred and 98/100 Dollars ($3,700.98). That in addition thereto, and pursuant to the authority conferred by the terms of the mortgage contract, and by existing statutes, the appellant paid out for taxes, insurance premiums and other necessary expenses, the further sum of Three Hundred Fifty-five and 31/100 Dollars ($355.31), making a total of Four Thousand Fifty-six and 39/100 Dollars ($4,056.39) paid by appellant for said property. There is also unpaid on said property the second half of the 1932 taxes in the sum of One Hundred Sixteen and 53/100 Dollars ($116.53). That there is therefore no question of a deficiency judgment involved herein (R. 91). That the period of redemption would expire on May 2, 1933 (R. 3, 19, 91). That but for Chapter 339, the appellant on that date would have been entitled to immediate possession of the property and to title thereto free and clear of any claim of appellees.

That Chapter 339 is expressly made "emergency" legislation and attempts to create a two-year moratorium on

real estate mortgages in Minnesota. Among other things the Act provides: (1) that at the option of the mortgagor, all foreclosures by advertisement may be converted into foreclosures by action in the court; (2) that mortgage foreclosures during the two-year period shall be prevented, delayed or granted on terms acceptable to the courts at the option of the mortgagor; (3) that redemption period from prior mortgage foreclosure sales, expiring less than thirty (30) days after the passage of the Act, (as in the instant case) were extended, arbitrarily and without intervention by the parties or by the courts, to May 18, 1933; (4) that at the option of the mortgagor, the redemption period from mortgage foreclosures already had may be extended to May 1, 1935; and (5) during said period, deficiency judgments may not be taken, and those already taken may not be enforced until after May 1, 1935; and (6) that suits to realize on any debt secured by a real estate mortgage is prevented during the two-year period, because the Act authorizes the courts, at the option of the mortgagor, to stay until May 1, 1935, the execution of any such judgment obtained either before or during said period.

That in the instant case, the mortgage having been foreclosed, the appellees, by petition in the trial court, sought and obtained judgment for benefits under the Act, namely, the extension of the redemption period from May 2, 1933, to May 1, 1935. The appellees thus obtained, in addition to the one year agreed by the parties, a further redemption period of just one day less than two years, during which time the appellant has been and will be deprived of its property rights. That the trial court, pursuant to said Act, and being bound by the prior determination of the validity of the Act by the Supreme Court of the State made in the prior appeal (— Minn. —, 249 N. W. 334), granted said extension (R. 76, 94).

The appellant was thus, in fact, deprived of its rights under the contract, and the terms of the contract were thus changed, not by mutual consent of the parties, but solely by virtue of the Act. Appellant claims that these facts constitute, in law, an impairment of the obligation of a contract by a statute of a State. That the State of Minnesota has by Chapter 339 impaired the obligation of this appellant's contract, in violation of the contract clause, Art. I, Sec. 10, of the Federal Constitution. Appellant claims, too, that these facts also constitute a taking of its property without due process of law in violation of the due process of law clause of Amendment XIV of the Federal Constitution. Appellant claims further, that these facts constitute a denial to it of the equal protection of the laws clause of Amendment XIV, in that appellant stands in the position of a creditor of a mortgage debt and is subjected to the moratorium in Chapter 339, whereas creditors in other forms of indebtedness are not subjected to the same or similar moratorium.

The judgment of the trial court was affirmed by the Supreme Court of the State of Minnesota, notwithstanding appellant's objections as aforesaid, which were urged on both trial court and on the supreme court throughout the entire proceedings below (R. 6, 47, 48; see also: trial court, R. 8, 11; appellee, R. 10; S. Ct. 18, 97). The present appeal is from the final judgment of the Supreme Court of the State of Minnesota, entered on July 28, 1933, sustaining the validity of Chapter 339.

All of which facts, appellant now submits, brings the case within the jurisdiction, on appeal, of this Court.

E.

Cases Believed to Sustain the Jurisdiction.

Louisiana R. & N. Co. v. *Behrman* (1914), 235 U. S. 164, 35 S. Ct. 62, 59 L. Ed. 175.

New York E. L. Co. v. *Empire City Subway Co.* (1914), 235 U. S. 179, 35 S. Ct. 72, 59 L. Ed. 184

Levy Leasing Co. v. *Siegel* (1922), 258 U. S. 242, 42 S. Ct. 289, 66 L. Ed. 595.

Appleby v. *City of New York* (1926), 271 U. S. 364, 46 S. Ct. 569, 70 L. Ed. 992.

Fiske v. *Stone* (1927), 274 U. S. 380, 47 S. Ct. 655, 71 L. Ed. 1108.

Miller v. *Schoone* (1928), 276 U. S. 272, 48 S. Ct. 246, 72 L Ed. 568.

New York v. *Zimmerman* (1928), 278 U. S. 63, 49 S. Ct. 61, 73 L. Ed. 184.

Shriver v. *Woodbine Sav. Bank* (1932), 285 U. S. 467, 52 S. Ct. 430, 76 L. Ed. 884.

Advance Rumely T. Co. v. *Jackson* (1932), 287 U. S. 283, 53 S. Ct. 133, 77 L. Ed. (Adv. Op. 192).

Anglo-Chilean N. S. Corp. v. *Alabama* (1933), 288 U. S. 218, 53 S. Ct. 373, 77 L. Ed. (Adv. Op. 451).

Ligget Co. v. *Lee* (1933), 288 U. S. 517, 53 S. Ct. 481, 77 L. Ed. (Adv. Op. 553).

Consolidated Textile Corp. v. *Gregory* (1933), 289 U. S. 85, 53 S. Ct. 529, 77 L. Ed. (Adv. Op. 750).

Young v. *Masci* (1933), 289 U. S. 253, 53 S. Ct. 599, 77 L. Ed. (Adv. Op. 767).

We respectfully submit that this Court has jurisdiction of this appeal by virtue of subdivision (*a*) of Section 237 of the judicial code, as amended.

Respectfully submitted,

ALFRED W. BOWEN,
Counsel for Appellant.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1933

No. 370

HOME BUILDING AND LOAN ASSOCIATION, A CORPORATION, APPELLANT,

vs.

JOHN H. BLAISDELL AND ROSELLA BLAISDELL, HIS WIFE, APPELLEES.

MOTION TO ADVANCE CASE FOR ARGUMENT AND TO INCREASE ALLOWANCE OF TIME OF ARGUMENT.

Comes now the appellant and respectfully moves this Honorable Court for an order advancing this case for early hearing, and for additional time for argument not to exceed a total of two (2) hours, and in support of its motion, the appellant makes the following brief statement of the matter involved and the reasons relied upon therefor:

A.

Statement of Matter Involved.

In order to save space and the time of the court, the facts will not be repeated in detail at this point, because they are set out in subdivision D of the statement of juris-

diction filed with the clerk of this Court. Appellant states briefly, however, that this case involves the validity of certain "emergency" legislation of the State of Minnesota, namely, the so-called "Mortgage Moratorium Law," being Chapter 339, Laws of Minnesota, 1933, page 514. That the parties to this appeal were respectively mortgagee and mortgagor in a real estate mortgage which had been duly foreclosed by advertisement by the appellant on default of the appellees. That but for Chapter 339, appellant would have had the right to immediate possession of the premises involved on May 2, 1933, and to title thereto, free and clear of any claim of the appellees. That Chapter 339 arbitrarily extended, in the instant case, the time for redemption from the foreclosure sale from May 2, 1933, to May 18, 1933, and that under the further provisions of Chapter 339, appellees sought and obtained further extension of the redemption period from May 18, 1933, to May 1, 1935. That the appellant claimed at all times below that said Act was unconstitutional, but nevertheless, the Supreme Court of the State of Minnesota held the Act to be valid.

B.

Reasons Relied Upon.

The appellant relies on the following reasons to sustain its motion to advance the case for hearing and for additional time for argument:

1. Importance of Questions Involved.—The case presents an important issue of law, in addition to the Federal questions arising under the contract clause of the Federal Constitution and the due process of the law clause and the equal protection of the laws clause of Amendment XIV thereof; namely, the extent and exercise of the police power of the State in times of economic depression.

2. Nature of Statute Challenged.—Chapter 339 so challenged as being unconstitutional is an attempt by the State of Minnesota to exercise its police power under such conditions and is attempted to be exercised for the purpose of aiding that class of debtors, who have given real estate mortgages as security for the debt, and the Act attempts to do so by declaring and creating a two-year moratorium on all such debts.

3. Status of Chapter 339.—That the validity of Chapter 339 is, at the present time, in doubt becaues of the Constitutional objections urged in this case and now presented to this Honorable Court for determination, because this Court is the final authority on the questions involved. That the validity of similar "emergency" legislation of many other States of the Union is likewise in doubt.

4. Speed has characterized the enactment of Chapter 339, and all of the proceedings hereinbelow. It is apparent from the matter immediately following in this paragraph that not only the parties hereto, but the trial court and the Supreme Court of the State of Minnesota appreciated the importance of this case, and its character as a test case, and above all this, the necessity for settling the questions involved so as to determine the validity of the Act at the earliest time practicable.

(*a*) Unlike the usual course of legislation, and particularly remedial legislation, which is adopted after long agitation and the usual process of investigation by legislative committees, sometimes of successive legislatures, Chapter 339 was conceived and adopted within one short session (of ninety days) of the Minnesota Legislature for 1933.

(*b*) The Act becomes effective at once and certain portions of it (Sec. 4. of Part One) even operated retroac-

tively and arbitrarily, and without any intervention of the parties to a mortgage or by the courts, extended to May 18, 1933, the period of redemption from prior mortgage foreclosure sales when the redemption period would otherwise expire less than thirty (30) days prior to that date.

(c) That the so-called "emergency" executive order of February 24, 1933, made by the Governor of the State, which order stayed the foreclosure of mortgages on homesteads until May 1, 1933, or until further order, was held invalid by the Supreme Court of the State of Minnesota in *State* v. *Moeller*, — Minn. —, 249 N. W. 330, as an attempt by the Executive to exercise legislative powers.

(d) That in the instant case, the appellees moved promptly by submitting within thirty (30) days of the passage of the Act, their petition for an extension of the redemption period under said Act; the case was advanced for hearing by the trial court and the relief sought was denied on May 16, 1933; the very next day a motion for new trial was made by the appellees and denied by the trial court on May 17, 1933; appeal was taken to the Supreme Court of the State, which also advanced the case for argument, and argument was had on May 26, 1933; the decision was handed down by the Supreme Court on July 7, 1933; on July 20, 1933, although the District Court was then on summer schedule and most of the judges absent on vacation, nevertheless, the case was again advanced by the trial court and heard on the merits on that date; findings were made on the next day, July 21, 1933, and judgment extending the redemption period to May 1, 1935, was entered; on the same day, appeal was taken to the State Supreme Court; and that court, although likewise on summer schedule, advanced the case and affirmed the judgment below on July 28, 1933.

5. There are a great number of cases pending in the courts of Minnesota, the decision of which will be affected by the determination of this case by this Court. That in the County of Hennepin alone, at the time the appeal herein was taken, there were on file approximately three hundred such applications under the Act, and that additional cases are being filed therein at the rate of three or four per day. That a great number of cases, in addition to those now pending in the courts of Minnesota, will be brought or will not be brought, and a great number of foreclosures will be disposed of, depending on the determination of this Court in this case. These matters are of vital importance not only to the persons directly and indirectly affected, but also to the State.

6. That in the event that this Honorable Court shall determine that said Chapter 339 is invalid, an early decision by this Court would have the following beneficial effects:

(*a*) The uncertainty and doubt referred to in paragraph 3, *supra*, would be removed.

(*b*) The great congestion and burden on the trial courts of the State would be removed and the necessity for trying a great number of proceedings under the Act in the first instance and any further time of the courts in subsequent proceedings thereunder would be avoided.

(*c*) Needless expense to the parties involved in all such proceedings under Chapter 339 would be avoided, and expense to the State involved in the maintenance and administration of justice would, likewise, be avoided, and those benefits would be reaped by all of the people of the State and particularly those paying taxes. It appears obvious that during the present times this economy is highly desirable.

(*d*) Additional delay in pending litigation, other than proceedings under the Act, would thus be avoided, which result is highly desirable because it is common knowledge that at the present time the course of justice and the trial of cases is seriously delayed by reason of the already congested calendars of the courts.

(*e*) Mortgagors generally and the class intended to be relieved by the Act would benefit because if the legislature of the State of Minnesota is thus found not to have had the authority to grant the relief intended to be given in the Act, such persons will no longer be misled into thinking they have such relief, and further, such persons will share in the benefits mentioned in paragraph (*c*), *supra*. They will also benefit by reason of the fact that if the validity of the obligation of debts secured by real estate mortgages is thus established, that mortgagees generally will be more willing to make loans, grant extensions, and otherwise compromise and settle pending claims.

(*f*) If such determination by this Court is made at an early date, the desirability or necessity for a special session of the legislature to devise other and lawful means to find relief, if any, during this emergency can be more quickly determined, and, perhaps, in time to take such steps, if any, during the coming winter when a session of the legislature could be more conveniently held and with less interference to the basic agricultural groups in the State; and also in order to furnish such relief, if any, at the earliest possible time during the economic depression.

7. And, finally, it is submitted that the court should advance this case for hearing because, even if the final determination made by this Court is that Chapter 339 is valid, an early decision would have the beneficial effect (*a*) of settling the law as stated in paragraph 3 *supra*; (*b*) the

State can more quickly set up whatever machinery is needed, if any, in addition to the trial courts, to administer the relief afforded by the Act; (*c*) in any event, the work imposed upon the courts pursuant to the Act can be more efficiently distributed among the courts; and (*d*) with due regard to the rights of other litigants in proceedings other than under Chapter 339, both in cases now pending and those hereafter brought; and (*e*) relief can be more efficiently and quickly given with absolute assurance that the same is not objectionable for the reasons urged in this proceeding.

Counsel feel, therefore, that in order to present adequately the argument before this Court, that time in addition to that allowed by rule 28, subdivision 4, should be allowed, but not to exceed a total of two hours; and that for the foregoing reasons, this Court should advance the case for early hearing and render its decision herein at the earliest time practicable.

WHEREFORE the appellant prays that this case be advanced upon the calendar and assigned for hearing at an early date, and that the time allowed for argument be increased, but not to exceed a total of two hours.

Dated August 17, 1933.

Respectfully submitted,

ALFRED W. BOWEN,
Counsel for Appellant.

Due and personal service of the foregoing motion is hereby admitted this 17th day of August, 1933.

Appellees state for the information of this Court at this time that they will not oppose the foregoing motion.

GEORGE T. SIMPSON,
Counsel for Appellees.

FILE COPY

FILED
OCT 21 1933
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1933.

No. 370.

HOME BUILDING AND LOAN ASSOCIATION, A CORPORATION,
Appellant,

vs.

JOHN H. BLAISDELL AND ROSELLA BLAISDELL, HIS WIFE,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA.

APPELLANT'S BRIEF.

ALFRED W. BOWEN,
Counsel for Appellant,
1360 Rand Tower,
Minneapolis, Minnesota.

KARL H. COVELL,
BENJAMIN P. MYERS,
GEORGE W. STRONG,
Of Counsel,
600 Security Building,
Minneapolis, Minnesota.

Hayward Brief Co., 601-7 Fourth Ave. So., Minneapolis

SUBJECT INDEX.

	Page
BRIEF ON APPEAL:	
I. Opinions of the Court Below	1
II. Jurisdiction	2
III. Statement of Case	2
IV. Specification of Errors	6
V. Argument	7
Summary of Argument	7
Real Estate Law of Minnesota	8
Existing State Law when the Contract Was Made	9
Provisions of Chapter 339, Laws of Minnesota, 1933, p. 514	10
Effect of Chapter 339 on Existing State Law	11
1. The destruction of the remedy of foreclosure by advertisement	11
2. The extension of redemption periods	12
3. The stay of actions ex contractu on the mortgage debt	15
4. The exemptions from the operation of the Act	17
Effect of Chapter 339 on the Appellant's Contract and Property	18
The Practical Effect of Chapter 339, Generally	20
Point A. The Supreme Court of Minnesota Erred ... (Under) ... the Contract Clause, Art. I, Sec. 10, of the Federal Constitution	23
Point B. The Supreme Court of Minnesota Erred ... (Under) ... the Due Process of Law Clause of Amendt. XIV., of the Federal Constitution	23
Police Power—Emergencies	27
Point C. The Supreme Court of Minnesota Erred ... (Under) ... the Equal Protection of the Laws Clause of Amendt. XIV., of the Federal Constitution	29
Conclusion	30

APPENDIX:

A. Chapter 889, Laws of Minnesota, 1933, p. 614 39

B. Summary Analysis of Chapter 889 44

C. Minnesota Constitution:

Art. 1, Section 8 49

Art. 4, Section 27 49

Art. 4, Section 28 49

D. Minnesota Statutes: Mason's Minn. Statutes, 1927:

(1) Sections 9149, page 50, herein cited 10

(2) " 9440, " 60, " " 18

(3) " 9441, " 60, " " .....

(4) " 9579, " 61, " " 10, 18

(5) " 9602, " 61, " " 9

(6) " 9603, " 61, " " 9, 11

(7) " 9604, " 62, " " 9, 11

(8) " 9605, " 62, " " 9, 11

(9) " 9606, " 62, " " 9, 11

(10) " 9607, " 62, " " 9, 11

(11) " 9608, " 62, " " 9, 11

(12) " 9609, " 62, " " 9, 11

(13) " 9610, " 64, " " 9, 11

(14) " 9611, " 65, " " 9, 11

(15) " 9612, " 66, " " 9, 11

(16) " 9613, " 66, " " 9, 11

(17) " 9626, " 66, " " 10, 18

(18) " 9630, " 67, " " 10

(19) " 9643, " 67, " " 18

(20) " 9644, " 67, " " .....

E. Statistics of Building Inspector's Department, City of Minneapolis 58

F. Statistics of Dodge Reports Service, Entire State of Minnesota 58

TABLE OF CASES CITED.

Page

Barnitz v. Beverly (1896), 163 U. S. 118, 16 S. Ct. 1043, 41 L. Ed. 93 ..... 16, 28, 38

Blaisdell v. Home Building & Loan Assn. (1933), ... Minn. ....., 294 N. W. 884, 888 (3) 1, 4, 6, 21

Block v. Hirsh (1921), 256 U. S. 135, 41 S. Ct. 458, 65 L. Ed. 865, 16 A. L. R. 165 28

Bronson v. Kinzie (1843), 14 U. S. (1 How.) 311, 11 L. Ed. 143 ..... 28, 28

Brown Holding Co. v. Feldman (1931), 256 U. S. 170, 41 S. Ct. 465, 65 L. Ed. 877 28

Burnside v. Craig (1918), 140 Minn. 404, 168 N. W. 175 16

Charleston Corp. v. Sinclair (1924), 264 U. S. 543, 44 S. Ct. 405, 68 L. Ed. 841 28

Daniels v. Tearney (1880), 102 U. S. (12 Otto.) 415, 26 L. Ed. 187 ..... 24, 28

Edwards v. Kearzey (1878), 96 U. S. (6 Otto.) 595, 24 L. Ed. 793 ..... 20, 24, 28

Gantly v. Ewing (1845), 44 U. S. (3 How.) 707, 11 L. Ed. 794 ..... 24, 28

Goenen v. Schroeder (1866), 8 Minn. 387, (344) 12, 15

Grace v. Diethscheldt (1933), ... Minn. ....., 249 N. W. 672 5

Heyward v. Judd (1860), 4 Minn. 483, (311 376) 12, 15

Howard v. Hughes (1861), 65 U. S. (24 How.) 461, 16 L. Ed. 753 ..... 23, 28

Levy Leasing Co. v. Siegel (1932), 258 U. S. 242, 42 S. Ct. 289, 66 L. Ed. 595 28

McCracken v. Hayward (1844), 43 U. S. (2 How.) 608, 11 L. Ed. 397 ..... 23, 28

Metlahey v. Virginia (1930), 185 U. S. 662, 10 S. Ct. 972, 34 L. Ed. 804 ..... 24, 28

O'Brien v. Krenz (1888), 36 Minn. 136, 30 N. W. 456 ..... 12, 15

Walker v. Whitehead (1873), 83 U. S. (16 Wall.) 314, 21 L. Ed. 387 ..... 24, 28

Webb v. Lewis (1891), 46 Minn. 286, 47 N. W. 803 11

Winne v. Lahart (1928), 166 Minn. 307, 193 N. W. 587 16

TABLE OF STATUTES CITED.

United States Constitution:

Art. I, Section 10 ..... 4; 6, 9, 23, 30

Amendt. XIV, Section 1. Due Process Clause 4, 6, 9, 23, 30

Amendt. XIV, Section 1. Equal Protection Clause .. 4, 6, 9, 29, 30

United States Statutes:

Judicial Code, Sec. 237 (a), as amended, 28 U. S. C. A. 344 (a)

R. S. Secs. 690, 709 as amended 2

Minnesota Constitution:

Article 1, Sec. 2 4

Article 4, Sec. 27 4

Article 4, Sec. 23 4

Minnesota Statutes—(Appendix A, B and D) ..... See index supra

Supreme Court of the United States

OCTOBER TERM, 1933.

No. 370.

HOME BUILDING AND LOAN ASSOCIATION, A CORPORATION,
Appellant,

vs.

JOHN H. BLAISDELL AND ROSELLA BLAISDELL, HIS WIFE,
Appellees.

APPELLANT'S BRIEF ON APPEAL.

I.

OPINIONS OF COURT BELOW.

Two opinions of the Supreme Court of the State of Minnesota are involved in this appeal. The first is the opinion on the merits rendered on July 7th, 1933, and reported *sub nom Blaisdell vs. Home Building and Loan Association,* in ... Minn. ..., 249 N. W. 334; it is also set out verbatim in the Record (18 to 42). The second and final opinion was rendered on July 2nd, 1933, and is a *per curiam* decision of one short paragraph only, which affirms the judgment entered in the trial court adverse to this appellant. This second opinion, also, is reported, under the same title, in ... Minn. ..., 249 N. W. 893 (2), and is set out verbatim in the printed record (p. 51).

II.

JURISDICTION.

We submit that this Court has jurisdiction in the premises under subdivision (a) of Section 237 of the Judicial Code. But in order to save space and time of this Court, nothing further on this matter will be presented at this point because the entire question of jurisdiction is treated at length in paragraphs A, B and E, in the Statement of Jurisdiction printed separately and filed with the Clerk of this Court.

III.

STATEMENT OF CASE.

In 1926, the appellant loaned the sum of thirty-eight hundred dollars ($3,800.00) to the appellees, and to secure the same, the appellees executed and delivered to the appellant a mortgage (set out in full, R. 7 to 11) upon certain real estate in the City of Minneapolis, Minnesota. The property was improved by a large fourteen (14) room house and a garage. The appellees occupied three rooms of said house and rented out the remaining eleven (11) rooms (R. 47).

The mortgage was in form, that commonly used in Minnesota, and contained the usual provisions for foreclosure by advertisement. After acknowledging the receipt of thirty-eight hundred ($3,800.00) dollars, the usual pledge of the premises involved was made to secure the debt, and the mortgage further provided (a) that the mortgagors covenanted to pay the debt, the taxes and the insurance on the premises, (b) that if any of the debt or interest or taxes or insurance remained unpaid when due for a period of two months, that then the payment of the whole debt should be accelerated

and would immediately be due and payable, (c) that in case of default the mortgagors authorized and empowered the mortgagees "to sell the hereby granted premises at public auction and convey the same to the purchaser in *fee simple*, agreeable to the statute in such case made and provided."

Thereafter, the appellees defaulted in the payments required under the contract, and pursuant to the terms of the contract and the statutes hereinafter mentioned, the mortgage was duly foreclosed under the power of sale by advertisement expressly provided in the contract. Appellant bid and paid the full amount of the mortgage debt, approximately thirty-seven hundred dollars ($3,700.00). This was a non-judicial or extra-judicial sale. No question of a deficiency judgment is involved (R. 46, 47). The sale was held on May 2nd, 1932, and under the existing law of the state the period of redemption would have expired on May 2nd, 1933, on which date the appellant would have become the owner in fee and entitled to the immediate possession of the real estate involved.

On April 18th, 1933, fourteen days before this redemption period expired, the Minnesota Legislature passed Chapter 339 of the Session Laws for 1933 and under it the following procedure was had with reference to the mortgage here involved:

The appellees presented to the District Court of Hennepin County their notice of motion and petition which is set forth in the record (1 to 5), in which petition they allege the execution of the above mortgage, the foreclosure as above stated, that the property exceeds in value the amount of the encumbrance, that the time to redeem therefrom will expire on May 2nd, 1933, and pray the court to make its order extending the period of redemption pursuant to said Chapter 339, and fixing the terms for such extension.

On the hearing and trial of this application, the appellant objected to the introduction of any evidence thereunder on the ground that the statute violated the contract clause, due process clause and the equal protection clause of the United States Constitution and similar provisions in the Constitution of the State of Minnesota (R. 5). The objection was sustained and the trial court ordered the proceeding dismissed (R. 6, 7). After a motion for a new trial by appellees (R. 12) had been denied by the trial court (R. 13), they appealed (R. 18) to the State Supreme Court of Minnesota, which thereupon reversed the trial court and held the statute, Chapter 339, constitutional (R. 18 to 42). This decision was filed July 7th, 1933, is reported in 249 Northwestern 384, and is set forth in full in the record (R. *Id.*).

The case was sent back to the trial court for trial and was tried in July, 1933. On this trial the appellants again urged that the law, Chapter 339, was in conflict with the provisions of the United States Constitution in the three respects previously urged (R. 42 to 44). These objections were overruled (R. 43, 44) and the trial resulted in the judgment and decree of the trial court (R. 49, 50). By this judgment the trial court ordered that the time to redeem from said foreclosure sale be extended and did extend the same to May 1st, 1935, upon the payment by the appellees of the sum of forty dollars ($40.00) per month to the appellants during said period, but the court, being advised that the case would be appealed, specifically provided that all such payments were to be made to the Clerk of the Court, to be held by him pending the final determination of this case (R. 50). From this judgment of the trial court the appellants appealed to the Supreme Court of the State of Minnesota, which is the highest court of the state, on the grounds that the statute under which the judgment and decree was

made was unconstitutional in the respects hereinbefore stated.

July 27th, 1933, the Supreme Court of Minnesota affirmed this judgment, as reported in 249 Northwestern, page 893 (R. 51), again holding the statute constitutional. From this final judgment of the highest court of the State of Minnesota this appeal was taken (R. 51).

We invite the attention of the Court to the fact that the property involved herein is not a homestead in the ordinary sense of the word, that is, the private dwelling house of a single family (R. 47). This matter is here noted to anticipate any argument which the appellees may advance on the ground that their *homestead* is involved, and that the Act is intended primarily to protect them and all other owners of mortgaged homesteads. The attention of this Court is invited to the decision of the Supreme Court of Minnesota in *Grace vs. Lichtscheidl,* ... Minn. ..., 249 N. W. 672, announced with the decision in the case at bar. In the former case, the court *held* squarely and expressly that the Act was not so designed, and that it applied *indiscriminately* to *all* real estate. This would include vacant, unimproved, agricultural or urban property, and whether used for purposes of residence, investment or speculation.

The findings of fact by the trial court, with the exception of the question of the present value of the premises, were based on stipulation of counsel, and, therefore, are not now questioned. Nor is the trial court's determination of the present rental value questioned by the appellant, and it cannot be questioned by the appellees because they have not appealed from the judgment entered pursuant thereto.

IV.

SPECIFICATION OF ERRORS.

1. The Supreme Court of Minnesota erred in affirming the judgment entered in the trial court, and in sustaining the validity of Chapter 339 of the Laws of Minnesota, 1933, against the contention by appellant that the same is repugnant to the contract clause, Art. I, Sec. 10, of the United States Constitution.

2. The Supreme Court of Minnesota erred in affirming the judgment entered in the trial court, and in sustaining the validity of Chapter 339 of the Laws of Minnesota, 1933, against the contention by appellant that the same is repugnant to the due process clause of Amendment XIV, of the United States Constitution.

3. The Supreme Court of Minnesota erred in affirming the judgment entered in the trial court and in sustaining the validity of Chapter 339 of the Laws of Minnesota, 1933, against the contention by appellant that the same is repugnant to the equal protection of the laws clause of Amendment XIV, of the United States Constitution.

V.

ARGUMENT.

Summary of Argument.

Appellant claims that Chapter 339, Laws of Minnesota, 1933, page 514, is unconstitutional under the Federal Constitution, as set out in the preceding paragraph, par. IV, because: 1. The Act deprives appellant of its rights under a lawful, subsisting, private mortgage contract (a) by changing arbitrarily the terms thereof over appellant's objection and to its detriment, and (b) by depriving appellant of its options and remedies under the contract, which, at the time the contract was executed, were contemplated by the parties, were freely given by the appellees, were the options and remedies usual in such transactions, and were valid in all things and authorized by the Laws of the State of Minnesota. 2. The Act deprives appellant of its property without due process of law for the reasons just mentioned, and because the possession and use of its property is thus arbitrarily withheld from May 2nd, 1933, until May 1st, 1935. 3. The Act denies appellant the equal protection of the laws as follows: The Act is designed and operates primarily to protect the ownership of real property, and the existence of such property is the basis for discriminating between creditors. That is, for designating those creditors who come within the Act and those who do not come within the Act, depending on whether or not they can or cannot subject real estate of their debtors to the payment of the debt. The Act applies only in those cases where creditors can proceed against the debtor's real estate, either because such creditors have taken, as security for the debt, a mortgage on the real property, or can otherwise proceed against the real prop-

erty by levy, execution or attachment. The Act operates differently on creditors who can thus reach the real property on the basis of whether or not such proceedings are founded on a mortgage, or not founded on a mortgage, but all such creditors are subjected to the Act. On the other hand, creditors who cannot proceed against the real estate of their debtors, either because such creditors have taken no mortgage or because they cannot otherwise proceed directly against the real property, are not subjected to the Act. Thus the fact that the debtor's real property may or may not be seized is the sole basis for including or excluding creditors within the operation of the Act. The appellant having taken a mortgage on the property and, therefore, having the right to look to the property to enforce payment of his debt, is subjected to the Act, while other creditors who have not taken mortgages or who cannot otherwise proceed against the real property of the debtor, are not subjected to the Act.

Real Estate Law of Minnesota.

Before proceeding with the argument on the constitutional questions raised in appellant's Specification of Errors, par. IV, *supra*, and points A, B and C, *infra*, appellant will present briefly the real estate law involved, its application to the mortgage contract in question, the practical effect of Chapter 339 thereon, and the effect of the Act generally. This will be done, although as briefly as possible, because this matter presents the basis of the constitutional questions involved, and we believe its presentation will help greatly to crystallize the issues before the Court.

The majority of the Supreme Court below admits that but for the "emergency" which that court determines to exist, Chapter 339 would be invalid, because in violation of the

limitations imposed on the States by the federal Constitution, and further, that the Act would be, likewise, contrary to the decisions of this Court and also to the long series of decisions of the Supreme Court of Minnesota. We appreciate, however, that such a concession of the invalidity of Chapter 339 is no more binding on the Court, than would be a determination to the contrary by a state court; that, therefore, it is incumbent on the appellant to support its claim of the unconstitutionality of the Act by the authority of decisions of this Court. Therefore, we will present here the practical effect of Chapter 339 on the existing law of the State and on appellant's rights, for the purpose of laying a foundation for appellant's claim so supported.

In order to present properly the issues before the Court, we will set out briefly the applicable provisions of law existing in Minnesota in 1926 when the loan of $3,800.00 was made by the appellants to the appellees and the mortgage in question was executed.

EXISTING STATE LAW WHEN THE CONTRACT WAS EXECUTED.

In 1926, at the time the mortgage was so executed, the statutes of Minnesota provided:

(a) *Foreclosure. Mason's Minnesota Statutes,* Section 9602 (Appendix D (5), p. 51), provided that every mortgage containing a power of sale (as contained in the mortgage involved herein) might be foreclosed by advertisement. The succeeding sections of the statutes, 9603 to 9613 (Appendix D (6) to (16), inc., pp. 51 to 56), inclusive, prescribe the manner of holding the sale as an extra-judicial or non-judicial sale and the entire process to be complete and the sale accomplished at the expiration of six weeks published advertisement of the notice of sale.

(b) *Redemption.* *Mason's Minnesota Statutes*, Section 9572 (Appendix D (1), p. 51), provides: But a mortgage shall not be a conveyance so as to enable the owner of the mortgage to recover possession of the real estate without a foreclosure.

Section 9626 (Appendix D (17), p. 56) provides that the mortgagor shall have twelve months within which to redeem after the sale and during which period he, of course, has possession under Section 9572 (Appendix D (1), p. 51).

Section 9630 (Appendix D (18), p. 57) provides that the effect of a redemption by the mortgagor shall be to annul the sale.

(c) *Recovery of Possession.* Section 9119 (Appendix D (1), p. 50) provides for recovery of possession by the mortgagee at the end of the period of redemption by the summary remedy of forcible entry and unlawful detainer, removable and triable within seven days after the claim by the mortgagee of the right to possession.

Of the above, the statutory provisions mentioned in (c) relate to the remedy, while those in (a) and (b) relate to the substance of the contract. All of them were, by operation of law, incorporated, so far as they were applicable, into the contract of the parties in this appeal.

See: Minnesota Cases cited, *infra*.

Provisions of Chapter 339, Laws of Minnesota, 1933, Page 514.

For the convenience of the Court, a summary analysis of the provisions of Chapter 339, is presented in Appendix B, (p. 44, herein). The entire Act is presented verbatim in Appendix A, (p. 22, herein).

THE EFFECT OF CHAPTER 339 ON EXISTING PROVISIONS OF LAW.

The effect, as a matter of local real estate law, of Chapter 339 on the existing law and the rights of the parties to this appeal, may be summarized and discussed under four (4) heads, as follows:

1. The destruction of the agreed remedy of foreclosure by advertisement. In the case of real estate mortgages containing a common law power of sale for default, this remedy is arbitrarily destroyed without compensation, at the option of the mortgagor, leaving only the right to foreclose in equity by action.

By this provision, the contract property rights of the mortgagee of real estate in a mortgage containing a power of sale for default are destroyed.

These rights are well settled by the Minnesota law as contract or property rights. It is common knowledge that more than 99% of Minnesota real estate mortgages contain this power of sale, substantially in the terms of the mortgage involved herein (R. 10). This power the Minnesota court has held, in *Webb vs. Lewis*, (1891) 45 Minn. 285, 47 N. W. 803, to be a valid common law power capable of being executed even in the absence of any statute regulating the manner of its exercise. Statutes exist, however, prescribing the manner of its exercise, and have existed in their present form since long prior to the making of all mortgages now a lien on Minnesota real estate. (*Mason's Minn. Stat., 1927*, Secs. 9603 to 9613, inc., Appendix D (6) to (16), inc., pp. 51 to 56.). These statutes provide that the power may be exercised by a non-judicial or extra-judicial sale. More than 99% of all Minnesota mortgage foreclosure sales are made by this non-judicial sale which is expeditious, inexpensive,

voluntarily agreed to by the parties, and permits, of course, a one year period of redemption thereafter. This power of sale conferred by the contract has, from early statehood, been consistently construed as a substantive contract property right.

Hayward vs. Judd, (1860) 4 Minn 483 (Gil. 375);
Goenen vs. Schroeder, (1865) 8 Minn 387 (Gil. 311);
O'Brien vs. Kreuz, (1886) 36 Minn 136, 30 N. W. 458.

No compensation for the destruction of the right is provided for in the Act and the destruction is completed at the option of the mortgagor on application therefor to the court of the county in which the real estate is situated. The result is accomplished by a court order, pursuant to the Act, forcing the mortgagee to proceed with his foreclosure, if at all, by action in equity. It would seem, in view of the prior decisions above cited, that but for the emergency, the court below, in the case at bar, would have *held* these provisions invalid.

2. The extension of redemption periods.—The redemption period of one year from date of sale of real estate on all execution sales and on all mortgage foreclosure sales, both by action and by advertisement under a power of sale, is extended arbitrarily, without compensation, by virtue of the Act only in some cases, and the courts are authorized to extend all others, as well as those so arbitrarily extended by the Act, to May 1st, 1935, as follows:

(a) *Arbitrary extensions.* All periods of redemption expiring between April 18th, 1933 (the date of passage of the Act), and May 17th, 1933, are extended arbitrarily by the Act alone to May 18th, 1933. This provision was invoked in, and is presented by, the case at bar. During such ex-

tended period, the mortgagor is empowered to apply for, and the court to grant, on terms fixed by the court under (b) next set out, a further and additional extension of the redemption price.

(b) *Extensions by court.* All redemption periods, including those already extended arbitrarily by the Act, (a) above, may be extended further by the court for periods up to nearly two years in some cases, that is, up to May 1st, 1935. The only condition prescribed is that such extension shall be made upon the payment by the mortgagor to the mortgagee, or in his behalf, of all or such part of the reasonable rental value of the premises "as to the court shall appear just and equitable."

The statutes have always provided a one-year period of redemption from mortgage and execution sales. (*Mason's Minn. Stat., 1927,* Secs. 9626, 9643, 9440; Appendix D (17), (19), (2), pp. 56, 57, 50.) It cannot be contracted away in a mortgage. (*Mason's Minn. Stat., 1927,* Sec. 9572; Appendix D (4), p. 51.) In the case of mortgages foreclosed under a power of sale, as in the case at bar, the sale is extrajudicial and the one-year period starts to run from the date of sale. (*Mason's Minn. Stat., 1927,* Sec. 9626; Appendix D (17); p. 56.) So also as to execution sales. (*Mason's Minn. Stat., 1927,* Sec. 9440; Appendix D (2), p. 50.) In foreclosure of mortgages by action, however, the statutes provide that the redemption period of one year shall run from the date of the Court's order confirming the sale. (*Mason's Minn. Stat., 1927,* Sec. 9643; Appendix D (19), p. 57.) Thus mortgage foreclosure by action is a judicial sale and is not complete until confirmed by special order of the court, which order invariably contains the substance of that statute and specifically recites that redemption may be made

only within one year from the date of such order. Hence the Legislature, by means of this Act which by its terms arbitrarily and openly changes judicial decrees of the courts, invades the separate and distinct powers of the judiciary. The Act grants arbitrarily an extension of redemption periods fixed by judicial decree prior to the passage of the Act. This arbitrary extension to May 18th, 1933, of all redemption periods expiring between April 18th, 1933, and May 17th, 1933, inclusive, applies to all foreclosures, whether made by advertisement under a power of sale or by action, as well as to execution sales. And during the period so extended, further extensions may be asked and secured by the debtor.

As to all redemption periods expiring May 18th, 1933, and later, the debtor may apply under this Act to the court for a further extension of the period of redemption to a date not later than May 1st, 1935. As a condition to the extension, however, the court may require the payment by the debtor of all or such part of the rental value "as to the court shall appear just and equitable." No other rule or test is given, nor is any definition attempted of what is just and equitable. Contiguous properties, for example, identical in all respects, may invoke orders requiring the payment in one case of 1% and in the other of 100% of the rental value, depending on the poverty or wealth of the mortgagors, or mayhap, of the mortgagees, if the court may deem these "just and equitable." Thus contracts will depend for enforcement and performance not upon their terms, but on the court's conception of the respective stations of the parties, the lower being the higher favored in the law and vice versa. (See appellant's objection on these specific grounds, R. 43.)

Again, if the property is a vacant lot, no compensation whatever would be provided because there would be no rental

value. Thus the mortgagee may or may not receive compensation for the indulgence he is forced to give the mortgagor.

The state court always has been in accord with this Court's decision in the case of *Barnitz vs. Beverley*, 163 U. S. 118, 16 S. Ct. 1042, 41 L. Ed. 93, holding that the right to possession at the end of the redemption period provided by law at the time of the making of the contract was a property right conferred by the contract itself and could not be extended over the objection of the creditor. That to do so would impair the obligations of the contract.

See: Minn. Cases cited p. 12 above.

3. The stay of actions *ex contractu* on mortgage debt.—The right to enforce the debt secured by a real estate mortgage is destroyed and postponed until May 1st, 1935, in the following respects:

(a) Deficiencies after foreclosure: Suits for deficiencies left after a foreclosure sale at a price insufficient to pay the mortgage debt may not be maintained or reduced to judgment until the redemption period expires.

(b) Suits on mortgage note before foreclosure: These may be reduced to judgment, but execution sales thereon are postponed in the same way as the mortgage itself, whether obtained before or after the passage of the Act (April 18th, 1933).

These provisions destroy and postpone the present right of the mortgagee to collect his debt, independent of the enforcement of the security of the mortgage: First, the Act, in express terms, prohibits the maintenance of an action for a deficiency judgment until the period of redemption expires. (Section 4; Appendix A (7), p. 36.) A sale pays the mortgage debt to the extent of the bid. If the debt is

not all paid by such sale, the balance may, but for Chapter 339, be sued for by the mortgagee.

Winne vs. Lahart, (1923) 155 Minn. 307, 193 N. W. 587.

This present right the Act destroys. (Last sentence of the Act, Section 4; Appendix A (7), p. 36.) So, likewise, in Sec. 3.2 (Appendix A (6), p. 36), it destroys the present right to enforce collection of the debt independently of the security of the mortgage. Under the law of Minnesota, a note and a mortgage securing the same are separate instruments, differing in their nature and purpose. The debt evidenced by the note is the principal debt and governed by the law merchant, while the mortgage is simply an incident thereto and is not governed by the law merchant. The note is enforceable according to its terms and independently of the mortgage; if the note is due, either expressly or by virtue of an acceleration clause therein, the note may be sued on independently of the enforcement of the mortgage.

Burnside vs. Craig, (1918) 140 Minn. 404, 168 N. W. 175.

This last mentioned section (Sec. 3.2; Appendix A (6), p. 36) contains the striking provisions that if a judgment has been obtained on a debt secured by a real estate mortgage, execution sales thereunder may be postponed as to all real estate of the debtor. If, however, a debt, not secured at all, is reduced to judgment, no interference or postponement of a sale on execution under such a judgment is authorized by the Act. The result is that such unsecured creditor may proceed to sell immediately any and all real estate, including mortgaged real estate, of the debtor, on execution and satisfy his debt. On the other hand, the creditor who has a mortgage on the identical real estate to which the unsecured creditor may resort, has no

remedy at all against any real estate of the debtor; not even against that specifically pledged as security for his debt.

4. The exemption from the operation of the Act of all mortgages held by United States agencies or those pledged to secure public debts and all mortgages made in the future. —The Act expressly exempts (a) any mortgage, while such mortgage is held by the United States or by any agency, department, bureau, board or commission thereof as security or pledge of the maker, its successors or assigns, (b) any mortgage held as security or pledge to secure the payment of a public debt or to secure the payment of the deposit of public funds (Appendix A (1), p. 33), and (c) any mortgage made in the future, or made prior to the passage of the Act if extended or renewed to a date not earlier than April 18th, 1934 (Appendix A (11), (18), pp. 39, 42).

By these provisions the Act denies relief to certain mortgagors, not depending upon the character of the property or the condition of the mortgagor or of any act which he has done or permitted, but solely on the basis of ownership of the debt, *i. e.*, status of the creditor. Likewise, certain mortgagees are not subjected to the Act, depending solely on their own conduct in encumbering the mortgage by pledge to secure a public debt or public deposit. This is true even though the legal title to the mortgage may still remain in the original mortgagee. Thus mortgages on contiguous pieces of property by two mortgagors, identical in all respects and made to the same mortgagee bank, in one case, would be subject to all the burdens of the Act and in the other case would not be subject to the Act, solely by reason of the pledge by the bank of the latter mortgage to secure a public deposit.

By eliminating from the application of the Act all con-

tracts, that is, all mortgages made after April 18th, 1933, there is a total absence of regulation in the future. Assuming the acts of mortgagees heretofore in enforcing their security is intudent and hostile to the public welfare, the Legislature has thus permitted *subsequent* contracts to be enforced by the same acts, condemned as hostile when used to enforce *prior* contracts.

Confessing a lack of confidence in the constitutionality of the Act, the Minnesota Legislature of 1933 re-enacted verbatim the provisions summarized under paragraph I above, which, as we have seen, destroy the remedy of a sale under a power of sale by advertisement, but the Legislature limited its application to homesteads only (Part II, Section 2; Appendix A (18), p. 40), adding, however, the unique provision that in construing Part II (Appendix A (15) to (23), inc., pp. 40 to 43) of the Act as to homesteads only, the court should subtract from the power conferred by the Act all of its excesses over the *legitimate* exercise of police power (Part II, Section 5; Appendix A (19), p. 42). The obvious conclusion is that such excesses shall remain and be effective, nevertheless, as to the provisions of Part I; Appendix A (2) to (13), inc., which do not affect homesteads exclusively.

The Effect of Chapter 339 on the Appellant's Contract and Property.

Chapter 339 became effective on April 18th, 1933. On that date appellant, the mortgagee, was the owner of the sheriff's certificate of sale on the mortgage foreclosure of appellant's mortgage, appellant having itself bid in the property at the sale on May 2nd, 1932. Under the law existing at the time the mortgage was made and at the time of the foreclosure

sale, the appellant, as such purchaser, would become the fee owner of the premises on May 2nd, 1933. On that date appellant, under said laws, was entitled to possession because there was no redemption. By the act of the Legislature itself and *without any act of either appellant or appellees*, this period of redemption was extended to May 18th, 1933, from May 2nd, 1933. Likewise, by the filing of the application for extension under the Act, the period of redemption was again extended for a second time to the date of the court's judgment extending the time of redemption, that is, to July 27th, 1933. This was a second extension under the Act and effected by the provision of the Act which states that the running of the period of redemption shall be tolled until the court shall make its order upon such application. (Part I, Sec. 1; Appendix A (7).) The third extension was effected by the judgment of the trial court and the Supreme Court of Minnesota from which this appeal is taken and by this judgment the period of redemption was further, and for a third time, extended to May 1st, 1935, that is, additional total periods of two years, less one day. In the meantime and during this two year period, appellant is deprived of possession of the premises and of the fee title and of the right to sell and dispose of the same in fee.

The next regular session of the Legislature of Minnesota will occur before the end of this additional period of redemption. If it be established that this extension of the period is valid, succeeding legislatures may make further extensions which will have the effect of making the redemption period perpetual and thus to transform the relationship of mortgagee and mortgagor into that of landlord and tenant, in which the tenant owns the title.

THE PRACTICAL EFFECT OF CHAPTER 339 GENERALLY:

The Act clearly shows that it was designed and intended to protect the ownership of real property in Minnesota at all hazards. By no stretch of the imagination, can it be claimed that the mere recital of the economic depression indicates an intention on the part of the legislature to cure the depression. Neither the conditions recited in the preamble of the Act, nor the actual prevailing conditions, approximate in degree of depression those conditions prevailing throughout this nation prior to the adoption of the contract clause in the federal Constitution, which conditions were judicially noticed by this Court in *Edwards vs. Kearzey* (1878), 96 U. S. (6 Otto) 595, 24 L. Ed. 793, at pages 601, 603 and 606. Rather, this recital in the Act is made solely to identify the cause of the landowners' present condition. And it is this condition only that the legislature seeks to remedy.

Practically, the Act defeats this purpose, because it aggravates the depression from which the landowners' condition is said to result. From the very nature of things, it tends naturally and inevitably to restrict the extension of credit on real estate security in Minnesota, and thus (a) to increase foreclosure of mortgages by discouraging loans or renewals by lenders, (b) to decrease employment of labor and the purchase and use of building materials because prospective builders cannot borrow funds to finance the improvement of real estate, by building or otherwise, and (c) to freeze assets and deposits in banks and other institutions which would otherwise become liquid by payment of old loans from new loans in the constant and ever recurring transfer of real estate investments from one lender who needs *payment* of principal, to another lender who needs

investment of principal.

On this point, the Supreme Court of Minnesota, in the case at bar, agreed unanimously. All members of the court joined in saying that the Act tends to restrict the extension of credit. In the majority opinion it was said (R. 24):

> "And again, it may well be argued that legislation which impairs contract obligations defeats its purpose. It tends to withdraw from the borrower the funds which otherwise he might procure. Lenders will not loan their money in a state where the contract for its repayment may be impaired at the uncontrolled whim of its legislature."

And in the dissenting opinion of Mr. Justice Stone, it was said (R. 38):

> "But to my notion that welfare will be hindered ultimately rather than helped by such laws as Chapter 339. Our western country was largely built into what it is on money borrowed some from our own people, but much from lenders in other states and overseas. Just now we are sadly in need of rebuilding, and we must rebuild largely on borrowings to be secured by mortgages on our real estate. Just how or from whom can we borrow if we serve notice, as this law does, that foreclosure of mortgages may be deferred indefinitely at the pleasure of officials owing their office to the favor of the debtors?"

The results so predicted by the court have followed swiftly and irresistibly. The official records of the Building Inspector of the City of Minneapolis, show that, during the

five months since the passage of Chapter 339, building in that City alone, has fallen in volume by 23 per cent, and in value, to the extent of $850,885.00 (Appendix E, p. 58). Records of the Dodge Reports Service, used by the United States government, as the outstanding and most reliable authority on building statistics throughout the United States, show likewise, that during the first four months since the enactment of Chapter 339, that building has fallen off, throughout the entire State of Minnesota, to the value of $1,491,700.00 (Appendix F, p. 58).

There is no easily accessible method of determining to what extent lenders of money, both corporate and individual, resident or non-resident of Minnesota, have withheld money for new loans, or refused to continue old loans. But the large number of applications for relief under the Act, tends to show that the volume of loans so withheld and the number of lenders withholding the same, is in both cases enormous.

In so far as Chapter 339 does the things set out in the foregoing quotations from the court's opinion, just that far does, and must, the Act defeat its own purpose. The Act is, for the same reasons, diametrically opposed to the present programs of national and state governments generally, to remedy present conditions by fostering and encouraging the extension of credit, the employment of additional labor, and the buying and use of goods and merchandise, including building materials. With all of the foregoing matter in mind it cannot be said with any degree of accuracy or reasonableness that Chapter 339 operates for the benefit or welfare of the state as a whole, or of all of its people as a whole, or even for the particular class of debtors intended to be benefited thereby.

Points A and B.

THE SUPREME COURT OF MINNESOTA ERRED IN AFFIRMING THE JUDGMENT ENTERED IN THE TRIAL COURT, AND IN SUSTAINING THE VALIDITY OF CHAPTER 339, LAWS OF MINNESOTA, 1933, AGAINST THE CONTENTION OF APPELLANT THAT THE SAME IS REPUGNANT TO THE CONTRACT CLAUSE, ART. I, SEC. 10, OF THE FEDERAL CONSTITUTION.

THE SUPREME COURT OF MINNESOTA ERRED IN AFFIRMING THE JUDGMENT ENTERED IN THE TRIAL COURT, AND IN SUSTAINING THE VALIDITY OF CHAPTER 339, LAWS OF MINNESOTA, 1933, AGAINST THE CONTENTION OF APPELLANT THAT THE SAME IS REPUGNANT TO THE DUE PROCESS OF THE LAWS CLAUSE OF THE FEDERAL CONSTITUTION.

We consolidate the argument on Points A and B, because we believe and submit that the questions involved in these points have been determined in the affirmative by this Court in the following decisions:

Bronson vs. Kinzie, (1843) 14 U. S. (1 How.) 311, 11 L. Ed. 143;

Howard vs. Bugbee, (1861) 65 U. S. (24 How.) 461, 16 L. Ed. 753;

Barnitz vs. Beverly, (1896) 163 U. S. 118, 16 S. Ct. 1042, 41 L. Ed. 93.

See also; Cases in which stay laws, interference with remedies under existing law, and extensions of redemption periods, were all *held* void as impairing the obligation of contracts within the meaning of the contract clause, Art. I, Sec. 10, U. S. Constitution.

McCracken vs. Hayward, (1844) 43 U. S. (2 How.) 608, 11 L. Ed. 397;

Gantly vs. Ewing, (1845) 44 U. S. (3 How.) 707, 11 L. Ed. 794;

Walker vs. Whitehead, (1873) 83 U. S. (16 Wall.) 314, 21 L. Ed. 357;

Edwards vs. Kearzey, (1878) 96 U. S. (6 Otto.) 595, 24 L. Ed. 793;

Daniels vs. Tearney, (1880) 102 U. S. (12 Otto.) 415, 26 L. Ed. 187;

McGahey vs. Virginia, (1890) 135 U. S. 662, 10 S. Ct. 972, 34 L. Ed. 304.

Appellant claims, first, that the case at bar falls squarely within these cases, and, second, that on the authority of these decisions, the following matters are conclusively established in the case at bar, as a matter of law, within the meaning of the contract clause and of the due process clause:

1. The Contract—That the agreement between the parties to this appeal constitutes a *contract*, and *property*.

2. Validity of Contract[1]—That the agreement is a *valid* contract in all things, viz.: a lawful, subsisting, private contract, based on the mutual consent of the parties, upon adequate consideration, etc.

3. Parties—That the appellant is a *proper party* to raise the constitutional questions herein presented.

4. The Mortgage—That the *mortgage* involved herein is a component part of the contract; that the mortgage, prior to the enactment of Chapter 339, had been duly foreclosed pursuant to the terms of the contract, and that but for that

[1]All of the contents of this paragraph and paragraphs 3 and 4 following, were either stipulated by counsel and incorporated in the findings of the trial court, or were otherwise admitted below.

Act, the legal title to the premises would have been irrevocably confirmed in the appellant, on May 2nd, 1933, together with the right of immediate possession, all free and clear of any claim whatever of the appellees.

5. Remedies—That the *remedies* provided in the contract were a part of the contract, both (a) those remedies *expressly* agreed between the parties, and (b) those remedies *impliedly* agreed between the parties by virtue of the state law existing at the time the agreement was made.

(a) The parties *expressly* agreed (1) that in case of foreclosure, the mortgage instrument should operate as a conveyance of the *fee title* upon expiration of the one-year redemption period; and (2) that in case of default by the mortgagors, the mortgagee might foreclose *by advertisement and without the intervention of any court.*

(b) The parties *impliedly* agreed, by virtue of the existing state law, that such existing remedies therein as were applicable to the contract, at the time of its execution, were a part of the contract. Among others, the following provisions of the existing law were so incorporated (as set out, *supra,* pp. 8 to 10) into the contract: That in case of foreclosure of the mortgage, the mortgagors might redeem, but only within *one* year from the date of such sale, and on their failure to do so, fee title to the premises would be confirmed, one year from the date of the foreclosure sale, in the mortgagee, as the purchaser at such foreclosure sale; that under such circumstances the purchaser would have the right to immediate possession; that such purchaser might obtain possession by the usual procedure in unlawful detainer; and that the mortgagee, if the proceeds of such sale were not sufficient to satisfy the debt in full,

might have a deficiency judgment[2] for such unsatisfied balance.

6. The Obligation—That the foregoing remedies, as the means of enforcement, are as much a part of the *obligation* of the contract, as is the promise of the mortgagors to perform their duties under the contract and to satisfy the same according to the terms thereof.

7. The Impairment, and the Taking of Property Without Due Process—That Chapter 339 *impairs* the obligation of the contract and *takes appellant's property without due process of law*, because:

(a) (1) The Act arbitrarily changed provisions of existing law in the manner indicated at pages 11 to 18, *supra*.

(b) That in the case at bar, solely by virtue of and pursuant to Chapter 339, the following retroactive changes were made over the appellant's objection and to its detriment:

(1) The agreed remedy of foreclosure by *advertisement* was changed into foreclosure by *action in the courts*, and the mortgagee was subjected to such action as was taken or may be taken hereafter by the court pursuant to the provisions of the Act.

(2) The redemption period was extended, in the same manner, from *one* year to *three* years.

(3) The irrevocable vesting in appellant of the fee title to the property was prevented on May 2nd, 1933, and since that date; also by virtue of the Act, the appellant's title is not one in fee absolute, as expressly agreed by the parties,

---

[2]The question of a deficiency judgment is not presented in the case at bar, because at the foreclosure sale, the appellant bid the full amount of its claim (R. 47). The point is mentioned merely for the information of the Court and to round out the argument in view of the provisions of the Act relating to deficiency judgments.

but is merely a defensible title, subject to redemption at any time during the additional two-year period by the mortgagors. This cutting down of the appellant's estate and enlargement of the mortgagors' estate is contrary to the express terms of the contract and is made arbitrarily by the Act. Moreover, the possession, use and dominion over its own property was thus denied and will continue to be denied until May 1st, 1935.

Police Power—Emergencies.

All of the foregoing matters, we believe, are settled by the foregoing decisions of this Court and we believe the principles of law announced therein by this Court are no longer open to argument. We think also that we are correct in stating that both the Supreme Court of Minnesota and the appellees admit, as they must, these principles and their application to the case at bar. But, the majority of the court below held, and the appellees argue, that nevertheless, Chapter 339 is valid; that it is valid because the economic depression constitutes an emergency, and that during such an emergency, the limitations on the states imposed by the federal Constitution are suspended; that the inherent power (*i. e.*, the police power) of the states to protect their own existence is superior to all limitations[8]; and that in such emergencies the states may do things, particularly through

---

[8]Aside from the fact that there is nothing in the record before this Court to show that the existence of the State of Minnesota is threatened, the claim that the police power is beyond all limitations in the federal Constitution is so extravagant as to hardly merit consideration, because it flies directly in the face of innumerable decisions of this Court to the contrary. Moreover, the proponents, themselves admit the contrary, twice: First, in admitting that in normal times the Act would be void because violating the federal Constitution; and, second; in arguing that the emergency justifies the Act and frees the police power of the restraints otherwise imposed by the Constitution.

their police power, which, admittedly, may not be done in normal times.

They profess to find support for these propositions in the decisions of this Court in the Rent Cases:

Block vs. Hirsh, (1921) 256 U. S. 135, 41 S. Ct. 458, 65 L. Ed. 865, 16 A. L. R. 165;

Brown Holding Co. vs. Feldman, (1921) 256 U. S. 170, 41 S. Ct. 465, 65 L. Ed. 877;

Levy Leasing Co. vs. Siegel, (1922) 258 U. S. 242, 42 S. Ct. 289, 66 L. Ed. 595;

Chastleton Corp. vs. Sinclair, (1924) 264 U. S. 543, 44 S. Ct. 405, 68 L. Ed. 841.

However, the appellant does not admit that the economic depression constitutes an emergency; nor does appellant admit that such emergency, if any, is of the character recognized by this Court as within the meaning of that term, *i. e.*, as constituting an emergency which will suspend the limitations of the federal Constitution.

In substance, the claim of the majority of the court below and of opposing counsel is, that in these cases, this Court has itself reversed, overruled, or modified the decisions previously cited (pp. 23-24, *supra*) and relied upon by appellant. With all due respect to them, we submit that this claim is unfounded. We have been unable, ourselves, to find any decision of this Court, and none has been cited by them, to show that this Court has reversed the decisions or retracted any of the applicable principles laid down in the cases cited by appellant. It would be absurd to claim that this Court has done so *expressly*. And we submit that this Court has not done so by *implication*, or *indirectly*—not even in the Rent Cases.

Appellant claims on the authority of the foregoing deci-

sions, that Chapter 339 is not a legitimate exercise of the police power; and that the conditions presented in the case at bar, do not constitute an emergency which will suspend the limitations imposed on the states by the federal Constitution; and that therefore the Act is invalid.

For all the foregoing reasons and those presented in the following paragraphs, under Point C, and on the authority of the foregoing decisions of this Court, appellant submits that the Act is void under the contract clause and the due process clause, and that the court below erred in holding valid Chapter 339.

Point C.

The Supreme Court of Minnesota Erred in Affirming the Judgment Entered in the Trial Court, and in Sustaining the Validity of Chapter 339, Laws of Minnesota, 1933, Against the Contention of Appellant That the Same Is Repugnant to the Equal Protection of the Laws Clause of the Federal Constitution.

Appellant claims that Chapter 339 denies equal protection of the laws, not only to appellant and other *creditors*, similarly situated, but also to other *debtors*[4], because:

(a) Creditors—While *creditors*, like appellant in the case at bar, who have taken security by way of mortgages on real estate in Minnesota, or creditors who may otherwise resort to such real estate owned by their debtors for satisfaction of the debt, are subjected to the provisions of the Act to the detriment of such creditors, other creditors who

---

[4]While the appellant, as a creditor is perhaps not in a position to urge discrimination between debtors, the matter is mentioned for the information of the Court and to round out the argument by indicating the additional vital objection which might be raised, in a proper case, against the Act.

have not taken such security or creditors who cannot otherwise resort to such real estate of their debtors for satisfaction of the debt, are not subjected to the Act.

(b) Debtors[5] Likewise, while *debtors*, like the appellees in the case at bar, who have given security by way of mortgage on their real estate in Minnesota, or whose real property can otherwise be resorted to in satisfaction of the debt, are given the benefits of the Act, other debtors who have not given such security or who have no real property out of which satisfaction of the debt can be exacted, are denied any benefits under the Act.

Appellant submits that there is no reasonable or valid basis for such classification and discrimination; that the Act is void, under the equal protection of the laws clause; and that the court below erred in holding valid Chapter 339.

CONCLUSION.

Appellant states briefly, in conclusion, on the basis of the facts presented in the case at bar, and for all of the foregoing reasons, and on the authority of the foregoing decisions of this Court: First, that the Act challenged is void because repugnant to and in violation of the contract clause, the due process of law clause and the equal protection of the laws clause of the federal Constitution; and second, that the court below erred in deciding to the contrary and in sustaining the Act as valid.

It is respectfully submitted, therefore, that this case is one calling for the exercise by this Court of its supervisory powers in order that the questions of Constitutional law of nation-wide importance presented herein shall be determined,

---

[5]See footnote 4, supra.

and in order that error below of the Supreme Court of the State of Minnesota shall be corrected. That to such end, Chapter 339, Laws of Minnesota, 1933, page 514, should be declared null and void as unconstitutional under the Constitution of the United States, and that the judgment of the Supreme Court of the State of Minnesota should be reversed.

Respectfully submitted,

ALFRED W. BOWEN,
Counsel for Appellant,
1360 Rand Tower,
Minneapolis, Minnesota.

KARL H. COVELL,
BENJAMIN P. MYERS,
GEORGE W. STRONG,
Of Counsel,
600 Security Building,
Minneapolis, Minnesota.

APPENDIX "A."

CHAPTER 339, LAWS OF MINN., 1933, PAGE 514.

CHAPTER 339—H. F. No. 1695.

An act relating to the granting of relief in certain cases during the emergency declared to exist, from inequitable foreclosure of mortgages on real estate and execution sales of real estate and for postponing certain sales and for extending the periods of redemption from certain others; and relating to the jurisdiction and procedure for such relief and for the right to possession during the extended period, and for limiting the right to maintain actions for deficiency judgments, and for extending the expiration of certain periods of redemption to 30 days after the passage of this act.

[1a] Whereas, the severe financial and economic depression existing for several years past has resulted in extremely low prices for the products of the farms and the factories, a great amount of unemployment, an almost complete lack of credit for farmers, business men and property owners and a general and extreme stagnation of business, agriculture and industry, and

Whereas, many owners of real property, by reason of said conditions, are unable, and it is believed, will for some time be unable to meet all payments as they come due of taxes, interest and principal of mortgages on their properties and are, therefore, threatened with loss of such properties through mortgage foreclosure and judicial sales thereof, and

Whereas, many such properties have been and are being bid in at mortgage foreclosure and execution sales for prices much below what is believed to be their real values and often for much less than the mortgage or judgment indebtedness, thus entailing deficiency judgments against the mortgage

and judgment debtors, and

Whereas, It is believed, and the Legislature of Minnesota hereby declares its belief, that the conditions existing as hereinbefore set forth has created an emergency of such nature that justifies and validates legislation for the extension of the time of redemption from mortgage foreclosure and execution sales and other relief of a like character; and

Whereas, The State of Minnesota possesses the right under its police power to declare a state of emergency to exist, and

Whereas, the inherent and fundamental purposes of our government, is to safeguard the public and promote the general welfare of the people; and

Whereas, Under existing conditions the foreclosure of many real estate mortgages by advertisement would prevent fair, open and competitive bidding at the time of sale in the manner now contemplated by law, and

Whereas, It is believed, and the Legislature of Minnesota hereby declares its belief, that the conditions existing as hereinbefore set forth have created an emergency of such a nature that justifies and validates changes in legislation providing for the temporary manner, method, terms and conditions upon which mortgage foreclosure sales may be had or postponed and jurisdiction to administer equitable relief in connection therewith may be conferred upon the District Court, and

Whereas, Mason's Minnesota Statutes of 1927, Section 9608, which provides for the postponement of mortgage foreclosure sales, has remained for more than thirty years, a provision of the statutes in contemplation of which provisions for foreclosure by advertisement have been agreed upon; NOW THEREFORE,

Be it enacted by the Legislature of the State of Minnesota:

[1b] The provisions of this Act shall not apply to any

mortgage while such mortgage is held by the United States or by any agency, department, bureau, board or commission thereof, as security or pledge of the maker, its successors or assigns, nor shall the provisions of this Act apply to any mortgage held as security or pledge to secure payment of a public debt or to secure payment of the deposit of public funds.

The following sections of this Act preceding Part Two shall constitute Part One.

[2]. Section 1. EMERGENCY DECLARED TO EXIST.—In view of the situation hereinbefore set forth, the Legislature of the State of Minnesota hereby declares that a public economic emergency does exist in the State of Minnesota.

[3] Sec. 2. MORTGAGEE MAY APPLY TO DISTRICT COURT FOR RELIEF.—In any proceedings heretofore commenced for the foreclosure of a mortgage on real estate by advertisement, in which a sale of the property has not been had, or in any such proceedings hereafter commenced, when the mortgagor, or the owner in possession of the mortgaged premises, or anyone claiming under said mortgagor, or anyone liable for the mortgage debt, at any time after the issuance of the notice of such foreclosure proceedings, shall apply to the District Court of the county wherein such foreclosure proceedings are being had, or are pending, by filing and serving a summons and verified complaint with prayer that the sale in foreclosure by advertisement shall be postponed and that the foreclosure, if any, shall proceed by action. If it appears to the court that granting of the relief as prayed would be equitable and just, then, and in that event, the foreclosure proceedings by advertisement may be postponed by the court by an ex parte order which shall be served with the summons and complaint upon the party foreclosing or

his attorney and at the time of the hearing upon such order, the court may then further postpone such sale, and the parties seeking to foreclose such mortgage shall proceed, if at all, to foreclose said mortgage by interposing a cross complaint in such action. Such service may be made as now provided for the service of a summons in a civil action, or by registered mail on the person foreclosing or his authorized agent or attorney at the last known address of such person, agent or attorney respectively. As a condition precedent to such postponement of such foreclosure sale by advertisement the party filing such verified complaint shall pay to the clerk for the person foreclosing the mortgage the expenses incurred not including attorney's fees which may accrue prior to any postponement. The filing of such verified complaint shall be deemed a waiver of publication of notice of postponement of the foreclosure sale and the sale at the time which may be fixed by the court shall be deemed to be a sale postponed in lieu of the time of sale specified in the published notice of mortgage foreclosure sale.

[4] Sec. 3. COURT MAY ORDER RESALE.—When any mortgage has been foreclosed by action, the court shall, on the coming in of the report of sale, cause notice of a hearing thereon to be served on the parties to the action who have appeared, and fix the time and place for the hearing on said report. Before granting an order confirming said sale, the court shall, if it appears upon due examination that the sale price is unreasonably and unfairly inadequate, or that justice has otherwise not been done, order a resale. If the sale is confirmed, the sheriff, or his deputy, shall forthwith execute and deliver the proper certificate of sale which shall be recorded within 20 days after such confirmation. Upon the hearing of the motion for an order confirming the sale of the

premises involved in the foreclosure of mortgages by action, in case the evidence is insufficient to establish a fair and reasonable market or rental value of such property, the court shall receive any competent evidence, including evidence tending to establish the actual value of the property involved in said mortgage foreclosure proceedings, for the purpose, or purposes, for which said property is or can be used. The court shall also receive any evidence tending to show to what extent, if any, the property has decreased in actual or market value by reason of the economic conditions existing at the time of or prior to such sale.

[5] Sec. 3. 1. Compromises. In case the parties to any such foreclosure action shall agree in writing upon terms of compromise settlement thereof, or of composition of the mortgage indebtedness, or both, the court shall have jurisdiction and may by its order confirm and approve such settlement or composition, or both, as the case may be.

[6] Sec. 3. 2. Jurisdiction of Court. The court shall have the same jurisdiction to postpone the enforcement of judgment by execution sale or to order resale or give other relief where such judgment is rendered in an action to collect a debt or obligation secured by a real estate mortgage, the foreclosure of which might be affected under the terms of this Act, as is conferred by this Act with regard to the mortgage.

[7] Sec. 4. Period of Redemption May Be Extended.—Where any mortgage upon real property has been foreclosed and the period of redemption has not yet expired, or where a sale is hereafter had, in the case of real estate mortgage foreclosure proceedings, now pending, or which may hereafter be instituted prior to the expiration of two years from and after the passage of this Act, or upon the sale of any

real property under any judgment or execution where the period of redemption has not yet expired, or where such sale is made hereafter within two years from and after the passage of this Act, the period of redemption may be extended for such additional time as the court may deem just and equitable but in no event beyond May 1st, 1935; provided that the mortgagor, or the owner in possession of said property, in the case of mortgage foreclosure proceedings, or the judgment debtor, in case of sale under judgment, or execution, shall prior to the expiration of the period of redemption, apply to the district court having jurisdiction of the matter, on not less than 10 days' written notice to the mortgagee or judgment creditor, or the attorney of either, as the case may be, for an order determining the reasonable value of the income on said property, or, if the property has no income, then the reasonable rental value of the property involved in such sale, and directing and requiring such mortgagor or judgment debtor, to pay all or a reasonable part of such income or rental value, in or toward the payment of taxes, insurance, interest, mortgage or judgment indebtedness at such times and in such manner as shall be fixed and determined and ordered by the court; and the court shall thereupon hear said application and after such hearing shall make and file its order directing the payment by such mortgagor, or judgment debtor, of such an amount at such times and in such manner as to the court shall, under all the circumstances, appear just and equitable. Provided that upon the service of the notice or demand aforesaid that the running of the period of redemption shall be tolled until the court shall make its order upon such application. Provided, further, however, that if such mortgagor or judgment debtor, or personal representative, shall default in the payments, or any of them, in such order required, on his part to be done,

or commits waste, his right to redeem from said sale shall terminate 30 days after such default and holders of subsequent liens may redeem in the order and manner now provided by law beginning 30 days after the filing of notice of such default with the clerk of such District Court, and his right to possession shall cease and the party acquiring title to any such real estate shall then be entitled to the immediate possession of said premises. If default is claimed by allowance of waste, such 30 day period shall not begin to run until the filing of an order of the court finding such waste. Provided, further, that the time of redemption from any real estate mortgage foreclosure or judgment or execution sale heretofore made, which otherwise would expire less than 30 days after the passage and approval of this Act, shall be and the same hereby is extended to a date 30 days after the passage and approval of this Act, and in such case, the mortgagor, or judgment debtor, or the assigns or personal representative of either, as the case may be, or the owner in the possession of the property, may, prior, to said date, apply to said court for and the court may thereupon grant the relief as hereinbefore and in this section provided. Provided, further, that prior to May 1, 1935, no action shall be maintained in this state for a deficiency judgment until the period of redemption as allowed by existing law or as extended under the provisions of this Act, has expired.

[8] Sec. 5. Court May Revise and Alter Terms.—Upon the application of either party prior to the expiration of the extended period of redemption as provided in this Act and upon the presentation of evidence that the terms fixed by the court are no longer just and reasonable, the court may revise and alter said terms, in such manner as the changed circumstances and conditions may require.

[9] Sec. 6. TRIAL TO BE HELD WITHIN 30 DAYS.—The trial of any action, hearing or proceeding mentioned in this Act shall be held within 30 days after the filing by either party of notice of hearing or trial, as the case may be, and such hearing or trial may be held at any general or special term, or in chambers, or during vacation of the court, and the order of the court shall be filed within 5 days after trial or hearing, no more than 5 days stay shall be granted and review by the Supreme Court may be had by certiorari, if application for the writ shall be made within 15 days after notice of such order and such writ shall be returnable within 30 days after the filing of such order.

[10] Sec. 7. INCONSISTENT LAWS SUSPENDED TILL MAY 1, 1935.—Every law and all the provisions thereof now in force insofar as inconsistent with the provisions of this Act, are hereby suspended until May 1st, 1935. No extension of the period for redemption nor any postponement of sale shall be ordered or allowed under this Act which would have the effect of extending the period for redemption beyond May 1, 1935.

[11] Sec. 8. APPLICATION OF ACT.—This Act as to mortgage foreclosures shall apply only to mortgages made prior to the passage and approval of this Act but shall not apply to mortgages made prior to the passage of this Act which shall hereafter be renewed or extended for a period ending more than one year after the passage of this Act; neither shall this Act apply in any way which would allow a resale, stay, postponement or extension to such time that any right might be adversely affected by a statute of limitation.

[12] Sec. 9. PROVISIONS SEPARABLE.—The provisions of this Act are hereby declared to be severable. If one provision hereof shall be found by the decision of a court of com-

petent jurisdiction to be invalid, such decision shall not affect the validity of the other provisions of this Act.

[13] Sec. 10. DEFINITION.—The words "mortgagor," "mortgagee," "judgment creditor," "judgment debtor," and "purchaser," whenever used in this Act shall be construed to include the plural as well as the singular and also to include their personal representatives, successors and assigns.

Sec. 11. APPLICATION.—Whenever the term "this Act" is referred to in that part of the bill amended so as to constitute Part One thereof, the same shall be construed as having reference only to Part One of this Act.

[14] PART TWO

[15] Section 1. TO APPLY TO HOMESTEADS ONLY.—The following Part Two, of this Act shall apply only to real estate occupied as a home exclusively by the person seeking relief or persons dependent upon him and to farm lands used by the person seeking relief as his principal means of furnishing necessary support to such person, his family and dependents, and shall apply only to cases not entitled to relief under some valid provision of Part One of this Act.

[16] Sec. 2. MORTGAGEE MAY APPLY TO DISTRICT COURT FOR RELIEF.—In any proceedings heretofore commenced for the foreclosure of a mortgage on real estate by advertisement, in which a sale of the property has not been had, or in any such proceedings hereafter commenced, when the mortgagor, or the owner in possession of the mortgaged premises, or anyone claiming under said mortgagor, or anyone liable for the mortgage debt, at any time after the issuance of the notice of such foreclosure proceedings, shall apply to the District Court of the county wherein such foreclosure proceedings

are being had, or are pending, by filing and serving a summons and verified complaint with prayer that the sale in foreclosure by advertisement shall be postponed and that the foreclosure, if any, shall proceed by action. If it appears to the court that granting of the relief as prayed would be equitable and just, then, and in that event, the foreclosure proceedings by advertisement may be postponed by the court by an ex parte order which shall be served with the summons and complaint upon the party foreclosing or his attorney and at the time of the hearing upon such order, the court may then further postpone such sale, and the parties seeking to foreclose such mortgage shall proceed, if at all, to foreclose said mortgage by interposing a cross complaint in such action. Such service may be made as now provided for the service of a summons in a civil action, or by registered mail on the person foreclosing or his authorized agent or attorney at the last known address of such person, agent or attorney respectively. As a condition precedent to such postponement of such foreclosure sale by advertisement the party filing such verified complaint shall pay to the clerk for the person foreclosing the mortgage the expenses incurred not including attorney's fees which may accrue prior to any postponement. The filing of such verified complaint shall be deemed a waiver of publication of notice of postponement of the foreclosure sale and the sale at the time which may be fixed by the court shall be deemed to be a sale postponed in lieu of the time of sale specified in the published notice of mortgage foreclosure sale.

[17] Sec. 3. JURISDICTION OF COURT.—The court shall have the same jurisdiction to postpone the enforcement of judgment by execution sale or to order resale or give other relief where such judgment is rendered in an action to collect

a debt or obligation secured by a real estate mortgage, the foreclosure of which might be affected under the terms of this Act, as is conferred by this Act with regard to the mortgage.

[18] Sec. 4. APPLICATION OF ACT.—The provisions hereof shall not apply to mortgages made after the passage of this Act nor to mortgages made prior to the passage of this Act which shall hereafter be renewed or extended to become due more than a year after such passage; neither shall this Act apply in any way which would allow a resale, stay, postponement or extension to such time that any right might be adversely affected by a statute of limitation.

[19] Sec. 5. LIMITATIONS OF ACT.—No postponement or extension shall be ordered under conditions which, under the temporary emergency, would substantially diminish or impair the value of the contract or obligation of the person against whom the relief is sought, without reasonable allowance to justify the exercise of the police power hereby authorized.

[20] Sec. 6. TRIAL TO BE HELD WITHIN 20 DAYS.—The trial of any action, hearing or proceeding provided for in this Act shall be held within 20 days after the filing by either party of notice of hearing or trial, as the case may be, and such hearing or trial may be held at any general or special term, or in chambers, or during vacation of the court, and the order of the court shall be filed within 5 days after trial or hearing, no more than 5 days stay shall be granted within which to apply for amended findings, and order or for review, and review by the Supreme Court may be had by certiorari, if application for the writ shall be made within 10 days after notice of such order and such writ shall be returnable within 30 days after the filing of such order.

[21] SEC. 7. PROVISIONS SEPARABLE.—The provisions of this Act shall be severable. The invalidity of any one provision, section or part shall not affect the validity of the remainder. Wherever the term "this Act" or "hereof" are used in Part Two, the same shall be construed as having no reference to Part One.

[22] SEC. 8. DURATION OF ACT LIMITED.—This Act shall remain in effect only during the continuance of the emergency and in no event beyond May 1, 1935. No extension of the period for redemption nor any postponement of sale shall be ordered or allowed under this Act which would have the effect of extending the period for redemption beyond May 1, 1935.

[23] SEC. 9. APPLICATION OF ACT.—Nothing in Part Two of this Act shall limit or restrict any provision of Part One.

Approved April 18, 1933.

APPENDIX "B."

Summary Analysis of Chapter 339, Laws of Minn., 1933, Page 514.

[1] Preamble. (a) A preamble recites an economic emergency. (b) The preamble exempts from the provision of the Act any mortgage "held by the United States or by any agency, department, bureau, board or commission thereof, as security or pledge of the maker, its successors or assigns," and "any mortgage held as security or pledge to secure payment of a public debt or to secure payment of the deposit of public funds."

[2] Section 1. This declares that an economic emergency exists.

[3] Section 2. This provides that in foreclosures by advertisement under power of sale in the mortgage, where a sale has not yet been made, the mortgagor, owner in possession or anyone liable for the mortgage debt may procure a postponement of the sale by advertisement by applying therefor to the district court of the county in which the real estate is situated and that the court may also order that the foreclosure proceedings shall thereafter proceed by action only. No compensation is provided for to the mortgagee, except the costs of the proceeding already incurred.

[4] Section 3. This provides that in all foreclosures of mortgages by action a court may order a re-sale if the price for which sold is unreasonably and unfairly inadequate and requires the court to receive evidence on applications to confirm any sale of actual value as therein defined.

[5] Section 3. 1. This provides that compromises by the parties of foreclosure actions may be approved by the court.

[6] Section 3. 2. This provides that a court shall have the jurisdiction to postpone execution sales on real estate and to order re-sale thereon on all judgments where the judgment is based on a debt secured by a real estate mortgage, the foreclosure of which is affected by the Act.

[7] Section 4. This provides that periods of redemption from mortgage foreclosure and execution sales shall be extended as follows:

(a) All periods of redemption expiring between April 18th, 1933 (the date of passage of the Act), and May 17th, 1933, inclusive, are arbitrarily extended by the legislature along to May 18th, 1933, during which arbitrarily extended period the mortgagor may apply for further extension under the succeeding paragraph (b);

(b) The district court of the county in which the real estate is located is authorized to grant a further extension of the periods so arbitrarily extended and of all other periods of redemption from mortgage foreclosure and execution sales to a date not later than May 1st, 1935, upon the application of the mortgagor or judgment debtor and solely upon the condition that the mortgagor or judgment debtor, as the case may be, shall pay to the creditor "all or a reasonable part of" the income or rental value "as to the court shall, under all of the circumstances, appear just and equitable," toward the payment of taxes, insurance, interest and principal mortgage indebtedness and at such times and in such manner as shall be fixed by the court.

(c) It is further provided in this section that the running of the period of redemption shall be controlled by the service of the application to the court for the extension. A further provision is that in case of default in compliance with the terms of the order and in case of waste, the period

of redemption shall terminate within thirty days after the default or the determination by an order of the court of the occurrence of waste, and junior encumbrancers may then redeem in order upon filing of the notice of default or of the order determining the occurrence of waste.

(d) The section further provides that no action for a deficiency judgment on the mortgage debt shall be maintained until the period of redemption expires.

[8] Section 5. This provides that orders for extension may be revised by the court where the first order is no longer just and reasonable.

[9] Section 6. This provides for the trial of proceedings under the Act within thirty days, the determination thereof by the court within five days thereafter, the limitation of a stay to five days and the review thereof by the supreme court of the state by certiorari under certain circumstances.

[10] Section 7. This suspends all inconsistent laws until May 1st, 1935, and provides that no period of redemption shall be extended beyond that date.

[11] Section 8. This provides that the Act shall not apply to mortgages made after the passage of the Act, nor to mortgages made prior to its passage which are thereafter renewed or extended for a period ending more than one year after the passage of the Act (i. e., to May 18th, 1934).

[12] Section 9. This provides that the provisions of the Act are separable and that if one provision be found invalid, the other provisions shall not be affected thereby.

[13] Sections 10 and 11. These have to do with definitions of terms used in the Act.

[14] Part II. Paragraphs (15) to (23), inclusive.

[15] Section 1. This provides that Part II shall apply only to real estate occupied as a home exclusively by the persons seeking relief or persons dependent upon him and to farm lands used by the applicant for relief as his principal means of furnishing necessary support for himself, family and dependents, and shall apply only to cases not entitled to relief under some valid provision of Part I.

[16] Section 2. This is identical with Part I, Section 2 (Par. (3), supra), but applies to homesteads only and destroys the remedy of foreclosure by advertisement under power of sale in the mortgage, identically as Part I, Section 2.

[17] Section 3. Is identical with Part I, Section 3.2 (Par. (6), supra), but applies to homesteads only.

[18] Section 4. Is identical with Part I, Section 8 (Par. (11), supra), in its effect, thus making Part II inapplicable to mortgages made after the passage of the Act and to mortgages made prior thereto which were renewed or extended beyond May 18th, 1934.

[19] Section 5. Prohibits a postponement or extension which "under the temporary emergency would substantially diminish or impair the value of the contract or obligation of the person against whom the relief is sought, without reasonable allowance to justify the exercise of the police power hereby authorized."

[20] Section 6. Provides for the hearing of applications under Part II within twenty days, the order thereon by the court within five days, the limitation of a stay to five days and a review by the supreme court of the state by certiorari within thirty days under certain circumstances.

[21] Section 7. Provides that all provisions of the Act are separable and the invalidity of one shall not make other provisions invalid.

[22] Section 8. Provides its operation only until May 1st, 1935, and a prohibition of extensions or postponements beyond that date.

[23] Section 9. Prohibits the application of any of Part II to the provisions of Part I.

APPENDIX "C"

Constitution of the State of Minnesota.

[1] Article 1.

Bill of Rights.

Sec. 2. Rights and Privileges of Citizens.—No member of this state shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers. There shall be neither slavery nor involuntary servitude in the state otherwise than in the punishment of crime, whereof the party shall have been duly convicted.

[2] Article 4.

Sec. 27. Laws to Embrace But One Subject.—No law shall embrace more than one subject, which shall be expressed in its title.

[3] Article 4.

Sec. 33. Special Legislation Prohibited.—In all cases when a general law can be made applicable no special law shall be enacted; and whether a general law could have been made applicable in any case is hereby declared a judicial question, and as such shall be judicially determined without regard to any legislative assertion on that subject. * * *

APPENDIX "D."

STATUTES—MASON'S MINN. CODE, 1927.

[1] Sec. 9149. RECOVERY OF POSSESSION.—When any person holds over lands or tenements after a sale thereof on an execution or judgment, or on foreclosure of a mortgage and expiration of the time for redemption, or after termination of contract to convey the same, or after termination of the time for which they are demised or let to him or to the persons under whom he holds possession, or contrary to the conditions or covenants of the lease or agreement under which he holds, or after any rent becomes due according to the terms of such lease or agreement, or when any tenant at will holds over after the determination of any such estate by notice to quit, in all such cases the person entitled to the premises may recover possession thereof in the manner hereinafter provided.

[2] Sec. 9440. REDEMPTION OF REALTY.—Upon the sale of real property, where the estate sold is less than a leasehold of two years' unexpired term, the sale is absolute; in all other cases the property sold, or any portion thereof which has been sold separately, is subject to redemption:

1. By the judgment debtor, his heirs or assigns.

2. By a creditor having a lien, legal or equitable, on the property or some part thereof, subsequent to that on which it was sold.

Creditors shall redeem in the order of their respective liens.

[3] Sec. 9441. ORDER OF REDEMPTION, ETC.—Within one year after the day of sale the judgment debtor, his heirs or assigns, may redeem by paying to the purchaser the

amount for which the property was sold, with interest, and, if the purchaser be a creditor having a prior lien, the amount thereof, with interest. If no such redemption be made, the senior creditor may redeem within five days after the expiration of such year, and each subsequent creditor within five days after the time allowed all prior lienholders, by paying the aforesaid amount, and all liens prior to his own, held by the party from whom he redeems: Provided, that no creditor can redeem unless within such year he file notice of his intention so to do with the clerk of the court where the judgment is entered.

[4] Sec. 9572. MORTGAGEE NOT ENTITLED TO POSSESSION.—A mortgage of real property is not to be deemed a conveyance, so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure.

[5] Sec. 9602. LIMITATION.—Every mortgage of real estate heretofore or hereafter executed, containing a power of sale, upon default being made in any condition thereof, may be foreclosed by advertisement within fifteen years after the maturing of such mortgage or the debt secured thereby, in the cases and in the manner hereinafter specified. Said fifteen years shall not be extended by reason of any nonresidence, or of any payment made or applied upon such debt after its maturity.

[6] Sec. 9603. REQUISITES FOR FORECLOSURE.—To entitle any party to make such foreclosure, it is requisite:

1. That some default in a condition of such mortgage has occurred, by which the power to sell has become operative.

2. That no action or proceeding has been instituted at

law to recover the debt then remaining secured by such mortgage, or any part thereof, or, if the action or proceeding has been instituted, that the same has been discontinued, or that an execution upon the judgment rendered therein has been returned unsatisfied in whole or in part.

3. That the mortgage has been recorded, and, if it has been assigned, that all assignments thereof have been recorded: Provided that, if the mortgage is upon registered land, it shall be sufficient if the mortgage and all assignments thereof have been duly registered.

[7] Sale under Notice of Sale. Service on Owner. Six weeks' published notice shall be given that such mortgage will be foreclosed by sale of the mortgaged premises or some part thereof, and at least four weeks before the appointed time of sale a copy of such notice shall be served in like manner as a summons in a civil action in the district court upon the person in possession of the mortgaged premises, if the same are actually occupied. If there be a building on such premises used by a church or religious corporation, for its usual meetings, service upon any officer or trustee of such corporation shall be a sufficient service upon it.

[8] See 1903, Requirements of Notice. Each notice shall specify:

1. The name of the mortgagor and of the mortgagee, and of the assignee of the mortgage, if any;

2. The date of the mortgage, and when and where recorded, except where the mortgage is upon registered land, in which case the notice shall state that fact, and when and where registered;

3. The amount claimed to be due thereon, and taxes, if any, paid by the mortgagee at the date of the notice;

4. A description of the mortgaged premises, conforming substantially to that contained in the mortgage; and

5. The time and place of sale.

[9] Sec. 9006. Attorney to foreclose. Record of power. Whenever an attorney at law is employed to conduct such foreclosure, his authority shall appear by power of attorney executed and acknowledged by the mortgagee or assignee of the mortgage in the same manner as a conveyance, and recorded prior to the sale in the county where the foreclosure proceedings are had. If such attorney be employed on behalf of such mortgagee or assignee by an attorney in fact, his authority shall likewise be evidenced by recorded power.

[10] Sec. 9007. Sale, How and by Whom Made. The sale shall be made by the sheriff or his deputy at public vendue to the highest bidder, in the county in which the premises to be sold, or some part thereof, are situated, between 9 o'clock a. m. and the setting of the sun.

[11] Sec. 9008. Postponement. Such sale may be postponed from time to time by inserting a notice of such postponement, as soon as practicable, in the newspaper in which the original advertisement was published, and continuing such publication until the time to which the sale is postponed, at the expense of the party requesting the same.

[12] Sec. 9009. Separate Tracts.—If the mortgaged premises consist of separate and distinct farms or tracts, they shall be sold separately, and no more farms or tracts shall be sold than are necessary to satisfy the amount due on such mortgage at the date of notice of such sale, with interest, taxes paid, and costs of sale.

[13] Sec. 9810. Foreclosure for Installments. By Advertisement or by Action. Sales. Disposition of Proceeds. Redemption. Where a mortgage is given to secure the payment of money by installments, each installment either for principal or interest, or both, as is due at any time, may be taken and deemed to be a separate and independent mortgage and such mortgage for each such installment may be foreclosed by advertisement or by action, in the same manner and with like effect as if a separate mortgage were given for each of such installments, and such foreclosure may be made and sale had subject to the installments yet to become due upon the mortgage; and a redemption from any such sale shall have the like effect as if the sale for such installment had been made upon an independent subsequent mortgage; provided in such cases, the attorney's fee on the foreclosure so made shall not exceed the amount permitted by law in case of a mortgage securing the amount of the debt then due on such foreclosure. The proceeds of the sale shall be applied first in payment of the costs of the foreclosure sale, and of the installment due with interest thereon, taxes and insurance premiums paid, if any, and then towards the payment of the residue of the sum secured by such mortgage, and not due and payable at the time of such sale; and if such residue does not bear interest such application shall be made with rebate of the legal interest for the time during which the residue shall not be due and payable; and the surplus, if any, shall be paid to the subsequent lienors, if any, in the order of their priority, and then to the owner of the equity of redemption, his legal representatives or assigns. In case of redemption from any sale herein authorized, at the option of the redemptioner, the whole amount remaining unpaid on the mortgage, with interest and other items, if any, which have become part of

the amount secured by the lien of the mortgage, may be included in the amount paid on redemption, and in such event the redemption so made shall have like effect as if the foreclosure sale had been made for the entire amount secured by the mortgage, including such additional items.

Before any sale herein authorized the holder of the mortgage shall file with the sheriff a verified itemized statement in writing, showing the entire amount remaining unpaid on the mortgage, including taxes and insurance premiums paid and other items which have become part of the amount secured, and the rate of interest to accrue on same, which statement shall be subject to public inspection and shall be read by the sheriff at the sale, immediately after reading the notice of sale. The certificate of sale shall set forth correctly, in addition to the amount of sale, the remaining amount still unpaid on and secured by the mortgage, subject to which the sale is made, and the rate of interest to accrue on same. And if, during the time to redeem from the sale, any additional or other item, other than interest at the rate so stated in the certificate, shall attach to said amount subject to which the sale was made, or any change shall occur in such amount or the rate of interest thereon, the facts with respect thereto shall be set forth by affidavit made and filed for record, and a copy furnished the sheriff, in accordance with the provisions of Section 9648, General Statutes, 1923, and the provisions of said section shall apply thereto.

[14] Sec. 9611. SURPLUS.—In all cases not provided for in Sec. 9610, if after sale of any real estate, made as herein prescribed, there remains in the hands of the officer making the sale any surplus money, after satisfying the mortgage, with interest, taxes paid, and costs of sale, the

surplus shall be paid over by such officer, on demand, to the mortgagor, his legal representatives or assigns.

[15] Sec. 9812. Mortgagee, etc., May Purchase. The mortgagee, his assignees, or his or their legal representatives, may fairly and in good faith purchase the premises so advertised, or any part thereof, at such sale.

[16] Sec. 9813. Certificate of Sale—Record—Effect. Whenever any sale of real property is made under a power of sale contained in any mortgage, the officer shall make and deliver to the purchaser a certificate, executed in the same manner as a conveyance, containing:

1. A description of the mortgage.
2. A description of the property sold.
3. The price paid for each parcel sold.
4. The time and place of the sale, and the name of the purchaser.
5. The time allowed by law for redemption.

Such certificate shall be recorded within twenty days after such sale, and when so recorded, upon expiration of the time for redemption, shall operate as a conveyance to the purchaser or his assignee of all the right, title and interest of the mortgagor in and to the premises named therein at the date of such mortgage, without any other conveyance whatever.

[17] Sec. 9828. Redemption by Mortgagor. When lands have been sold in conformity with the preceding sections of this chapter, the mortgagor, his personal representatives or assigns, within twelve months after such sale, may redeem such lands, as hereinafter provided, by paying the sum of money for which the same were sold, with interest from the time of sale at the rate provided to be paid on the

mortgage debt, not to exceed ten per cent per annum, and, if no rate be provided in the mortgage, at the rate of six per cent, together with any further sums which may be payable pursuant to Sec. 9648.

[18] Sec. 9650. Effect of Redemption. If redemption is made by the owner of the property sold, his heirs, personal representatives, or assigns, such redemption annuls the sale; if by a creditor holding a lien on the property or some part thereof, the certificate of redemption, executed, acknowledged and recorded as provided in Sec. 9629, operates as an assignment to him of the right acquired under such sale, subject to such right of any other person to redeem as provided by law.

[19] Sec. 9643. Redemption by Mortgagor, Creditor, etc. The mortgagor, or those claiming under him, within one year after the date of the order of confirmation, may redeem the premises sold, or any separate portion thereof, by paying the amount bid therefor, with interest thereon from the time of sale at the rate provided to be paid on the mortgage debt, not to exceed ten per cent per annum, and, if no rate be provided in the mortgage, at the rate of six per cent, together with any further sum which may be payable pursuant to Section 9648. Creditors having a lien may redeem in the order and manner in this Chapter hereinbefore specified, but no creditor shall be entitled to redeem unless within said year he files with the clerk notice of his intention to redeem.

[20] Sec. 9644. Delivery of Possession.—When possession of lands is wrongfully withheld after expiration of the time of redemption, the court may compel delivery of possession to the party entitled thereto by order directing the sheriff to effect such delivery.

APPENDIX "E."

STATISTICS OF BUILDING INSPECTION DEPARTMENT, CITY OF MINNEAPOLIS, MINNESOTA.

		Number of Permits	Dollar Volume of Construction
Five months of	1932	2059	$2,421,780.
May, June, July,	1933	1790	1,564,895.
Aug. and Sept.	Decrease	269	856,885.
(Act passed	Decrease in	23%	36%
April 18, 1933)	Percentage		

APPENDIX "F."

STATISTICS OF DODGE REPORTS SERVICE, ENTIRE STATE OF MINNESOTA.

		Dollar Volume of Construction
Four months of May,	1932	$7,979,200.00
June, July and August,	1933	6,487,500.00
(Act passed	Decrease	1,491,700.00
April 18, 1933)		

FILE COPY

Supreme Court of the United States

OCTOBER TERM, 1933.

No. 370.

HOME BUILDING AND LOAN ASSOCIATION, A CORPORATION,
Appellant,

vs.

JOHN H. BLAISDELL AND ROSELLA BLAISDELL, HIS WIFE,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MINNESOTA.

APPELLANT'S SUPPLEMENTAL BRIEF.

ALFRED W. BOWEN,
Counsel for Appellant,
1300 Rand Tower,
Minneapolis, Minnesota.

KARL H. COVELL,
BENJAMIN P. MYERS,
GEORGE W. STRONG,
Of Counsel,
660 Security Building,
Minneapolis, Minnesota.

Harrison Brief Co., 901-3 Fourth Ave. So., Minneapolis

SUBJECT INDEX.

Page

SUPPLEMENTAL BRIEF:
- Introduction 1
- Claim of Appellees 2
- Claim of Appellant 2
- Argument 2
  - Limitations in the Federal Constitution on the Police Power of the States 3
  - The Judicial Review of Legislation 4
  - The Police Power of the States 6
  - Analysis of the Rent Cases 10
  - Controlling Distinction in the Rent Cases 13
- Conclusion 15

TABLE OF CASES CITED.

Barnitz v. Beverly (1896), 163 U. S. 118, 16 S. Ct. 1042, 41 L. Ed. 93 ..... See "Prior Cases"

Block v. Hirsh (1921), 256 U. S. 135, 41 S. Ct. 458, 65 L. Ed. 865, 16 A. L. R. 165 ..... 5, see "Rent Cases"

Bronson v. Kinzie (1843), 14 U. S. (1 How.) 311, 11 L. Ed. 143 ..... see "Prior Cases"

Brown Holding Co. v. Feldman (1921), 256 U. S. 170, 41 S. Ct. 465, 65 L. Ed. 877 ..... 14, see "Rent Cases"

Burns Baking Co. v. Bryan (1924), 264 U. S. 504, 44 S. Ct. 412, 68 L. Ed. 813, 32 A. L. R. 661 8

Chastleton Corp. v. Sinclair (1924), 264 U. S. 543, 44 S. Ct. 405, 68 L. Ed. 841 ..... 5, 10, see "Rent Cases"

Daniels v. Tearney (1880), 102 U. S. (12 Otto.) 415, 26 L. Ed. 187 ..... see "Prior Cases"

Delaware L. & W. R. Co. v. Morristown (1928), 276 U. S. 182, 48 S. Ct. 276, 72 L. Ed. 523 4

Edwards v. Kearzey (1878), 96 U. S. (6 Otto.) 595, 24 L. Ed. 793 ..... 3, see "Prior Cases"

Frost Trucking Co. v. Railroad Commission (1926), 271 U. S. 583, 46 S. Ct. 605, 70 L. Ed. 1101 ..... 10, 11

Gantly v. Ewing (1845), 44 U. S. (3 How.) 707, 11 L. Ed. 794 ..... see "Prior Cases"

Howard v. Bugbee (1861), 65 U. S. (24 How.) 461, 16 L. Ed. 753 ..... see "Prior Cases"

Iowa Des Moines Nat'l Bank v. Bennett (1931), 284 U. S. 239, 52 S. Ct. 133, 76 L. Ed. 265 4

Levy Leasing Co. v. Siegel (1922), 258 U. S. 242, 42 S. Ct. 289, 66 L. Ed. 595 ..... 5, 12, see "Rent Cases"

Louisville Gas and Electric Co. v. Coleman (1928), 277 U. S. 32, 48 S. Ct. 423, 72 L. Ed. 770 5

Madisonville Traction Co. v. St. Bernard Min. Co. (1905), 196 U. S. 239, 25 S. Ct. 251, 49 L. Ed. 402 4

McCracken v. Hayward (1844), 43 U. S. (2 How.) 608, 11 L. Ed. 397 ..... see "Prior Cases"

McGahey v. Virginia (1890), 135 U. S. 662, 10 S. Ct. 972, 34 L. Ed. 304 ..... see "Prior Cases"

Meyer v. Nebraska (1923), 262 U. S. 390, 43 S. Ct. 625, 67 L. Ed. 1042 8

Milligan, Ex parte (1866), 71 U. S. (4 Wall.) 2, 18 L. Ed. 281 4

Morrison v. Work (1925), 266 U. S. 481, 45 S. Ct. 149, 69 L. Ed. 394 10

New State Ice Co. v. Liebmann (1932), 285 U. S. 262, 52 S. Ct. 371, 76 L. Ed. 747 11
Pennsylvania Coal Co. v. Mahon (1922), 260 U. S. 393, 43 S. Ct. 158, 67 L. Ed. 322 ..... 10, 11
Prior Cases (Bronson v. Kinzie; Howard v. Bugbee; Barnitz v. Beverly. And see also Edwards v. Kearzey; Daniels v. Tearney; Gantly v. Ewing; McCracken v. Hayward; McIlhoy v. Virginia; Walker v. Whitehead) 1, 2, 3, 15
Rent Cases (Block v. Hirsh; Brown Holding Co. v. Feldmann; Chastleton Corp. v. Sinclair; Levy Leasing Co. v. Siegel) 2, 3, 9, 10, 11, 13, 14, 15
Ribnik v. McBride (1928), 277 U. S. 350, 48 S. Ct. 545, 72 L. Ed. 913 11
Small Co. v. American Sugar Ref. Co. (1925), 267 U. S. 233, 45 S. Ct. 295, 69 L. Ed. 589 6
Tyson & Brothers v. Banton (1927), 273 U. S. 418, 47 S. Ct. 426, 71 L. Ed. 718 ..... 10, 11
Walker v. Whitehead (1873), 83 U. S. (16 Wall.) 314, 21 L. Ed. 387 ..... see "Prior Cases"
Wolff Packing Co. v. Court of Industrial Relations (1923), 262 U. S. 522, 43 S. Ct. 630, 67 L. Ed. 1103, 27 A. L. R. 1280 ..... 5, 6, 8

TABLE OF STATUTES CITED

United States Constitution
Art. I, Section 10 ..... 4, 14, 15
Amendt. XIV, Section 1. Due Process Clause 4, 14, 15
Amendt. XIV, Section 1. Equal Protection Clause 4, 15
Minnesota Constitution, Article 4, Sec. 33 6
Chapter 339 Laws of Minnesota, 1933, page 514 ..... 1, 2, 3, 5, 8, 9, 12, 13, 15

Supreme Court of the United States

OCTOBER TERM, 1933.

No. 370.

HOME BUILDING AND LOAN ASSOCIATION, A CORPORATION,
Appellant,

vs.

JOHN H. BLAISDELL AND ROSELLA BLAISDELL, HIS WIFE,
Appellees.

APPELLANT'S SUPPLEMENTAL BRIEF.

INTRODUCTION.

In appellant's prior brief[1] (pp. 27, 28), it was shown that both the court below and the appellees concede that Chapter 339, Laws of Minnesota, 1933, Page 514, is invalid, as appellant contends, because it violates the provisions of the federal Constitution, but, nevertheless, they claim that the Act is valid as emergency legislation under the police power. Independently of that concession, appellant believes that the invalidity of the Act is established conclusively and without any exceptions in favor of the police power, in emergencies or otherwise, by the decisions (hereinafter called the "prior"

[1]All references herein to the "Brief" refer to the appellant's brief filed with the Clerk of the Supreme Court of the United States on October 20th, 1933.

cases, Brief, pp. 23, 24) of this Court which were cited by the appellant.

In view of the claim of the appellees, however, this supplemental brief will be addressed only and very briefly to the issue thus raised.

THE CLAIM OF THE APPELLEES.

In view of the concession by the appellees that under the prior decisions, the Act is void, and in view of the claim nevertheless made by the appellees, relying on the later Rent Cases (Brief, p. 28), that the Act is valid as a legitimate exercise of the police power in an emergency, their argument may be reduced to the following: Either (a) this Court in the prior decisions made a reservation in favor of the police power in emergencies, or (b) this Court, in the later cases, reversed, overruled or modified the prior decisions.

THE CLAIM OF THE APPELLANT.

The appellant believes that such claim of the appellees cannot be sustained. Appellant claims that its challenge of Chapter 339 is consistent with, and in accord with, the opinions and decisions of this Court in the Rent Cases.

ARGUMENT.

With respect to the claim of appellees, (a) above, it is obvious and beyond contradiction, that in the prior cases, this Court did not make any *express* reservation in favor of the police power, in emergencies or otherwise; nor can any such *implied* reservation be claimed, because in those cases the mortgage moratorium laws and stay laws involved were enacted under and in the exercise of the police power, and

during economic depressions. It was the intention of the framers of the Constitution, as stated by this Court in those cases, that under depression conditions like those now prevailing, laws of the type of Chapter 339 should be forever prohibited, whether enacted under the police power, or any other power[2]. The legislative acts involved in those cases were expressly and unequivocally declared void by this Court.

With respect to appellees' further argument, (b) above, that this Court in the later cases reversed, overruled or modified the prior cases, appellant will repeat here what has been said before (Brief, p. 28) and will follow with the argument to support the statement:

> "We have been unable, ourselves, to find any decision of this Court, and none has been cited by them [the court below and the appellees], to show that this Court has reversed the decisions or retracted any of the applicable principles laid down in the cases cited by appellant. It would be absurd to claim that this Court has done so *expressly*. And we submit that this Court has not done so by *implication*, or *indirectly*—not even in the Rent Cases."

Limitations in the Federal Constitution on the Police Power of the States.

We have elsewhere[3] considered the claim of the appellees, that the police power, as the inherent power of the states, is superior to all limitations, and we have pointed out that

---

[2]Edwards vs. Kearzey (1878), 96 U. S. (6 Otto.) 595, 604, 605 and 606, 24 L. Ed. 793; see also: Brief, p. 20.

---

[3]See: Brief, p. 27, and Footnote 3.

the decisions of this Court to the contrary are innumerable. It cannot be denied that many provisions of the federal Constitution are intended to be, and are, limitations on such power. The contract clause, the due process clause, and the equal protection of the laws clause are all such limitations. The police power is no exception to the powers of the state which are limited by applicable provisions of the federal Constitution. It is clear and expressly decided that the power of taxation is so limited[4]; and that the power of eminent domain is so limited[5]. The court below and the appellees concede, that the police power is so limited. But they assert that the "emergency" suspends the limitations. This Court has stated positively and squarely, in a case involving an actual emergency arising during the Civil War, that even the war power of the federal government is not without limitations, and that such an emergency does not suspend constitutional limitations and guaranties.

Ex parte Milligan (1866), 71 U. S. (4 Wall.) 2, 120, 121, 18 L. Ed. 281, 295.

The Judicial Review of Legislation.

The appellees argue, in reliance to a great extent, on the Rent Cases, that the courts have no power to review or to question the legislative declaration (a) of the existence of the emergency, and (b) that the relationship of mortgagor and mortgagee and the conduct of the business of lending

---

[4]Iowa Des Moines Nat'l Bank vs. Bennett (1931), 284 U. S. 239, 52 S. Ct. 133, 76 L. Ed. 265.

---

[5]Madisonville Traction Co. vs. St. Bernard Min. Co. (1905), 196 U. S. 239, 25 S. Ct. 251, 49 L. Ed. 402;
Delaware L. & W. R. Co. vs. Morristown (1928), 276 U. S. 182, 48 S. Ct. 276, 72 L. Ed. 523.

money on the security of real estate, and the relationship of creditor and debtor, are sufficiently affected with a public interest as to warrant regulation by the state in the exercise of its police power.

On the contrary, appellant submits that this Court has determined to the contrary, and that this Court has the power, in the case at bar, to review the legislative declarations: (a) as to the existence of emergency, because its existence is the basis upon which the validity of Chapter 339 depends[6], and (b) as to the existence and extent of the "public interest"[7].

The appellant submits further that this Court unquestionably has the power to review the legislative enactment; (c) to ascertain whether the object thereof comes within the legitimate scope of the police power[8]; (d) to ascertain whether the classification, if any, is reasonable and proper[9]; (e) to ascertain whether the rules and standards provided,

---

[6]See Art. 4, Sec. 33, Minn. Const. (Brief, p. 49, appendix C) and reference thereto by the trial court (R. 15). Chastleton Corp. vs. Sinclair (1924), 264 U. S. 543, 547, 44 S. Ct. 405, 406, 68 L. Ed. 841, in which Mr. Justice Holmes explains what was said in reference to the existence of an emergency in Block vs. Hirsh. See also; Statement relative to emergencies by Mr. Chief Justice Taft in Wolff Packing Company vs. Court of Industrial Relations (1923), 262 U. S. 522, 542, 43 S. Ct. 630, 635, 67 L. Ed. 1103, 27 A. L. R. 1280.

[7]See: Statement by Mr. Chief Justice Taft in the Wolff case, Footnote 6, supra, at pages 535 and 536 of Vol. 262 U. S. Rep., and Pages 632 and 633 of Vol. 43 S. Ct. Rep.

[8]See: Statement by Mr. Chief Justice Taft in the Wolff case at Pages 539 to 542 of Vol. 262 U. S. Rep., and Pages 634 and 635 of Vol. 43 S. Ct. Rep.

[9]See: Statement by Mr. Justice Brandeis in Louisville Gas and Electric Co. vs. Coleman (1928), 277 U. S. 32, 42, 43, 48 S. Ct. 423, 427, 72 L. Ed. 770, in Footnote 1 therein.

if any, are reasonably definite and certain[10], and (f) to ascertain whether the extent and effect of the legislation are such as to reasonably and properly accomplish a legitimate object within the police power[11].

Police Power of the States.

It is apparent from the many decisions of this Court in cases involving the validity of state laws enacted under the police power, that no attempt by the appellant to make an all-inclusive definition of the police power could be successful; that a definition can be made only with respect to the circumstances presented in a given case.

In the case at bar, as has been indicated above, the claim of the appellees, in view of their reliance on the Rent Cases, amounts, in substance, to the assertion that the transaction involved is affected with a public interest. With this situation in mind, the appellant believes that it is necessary to start with a definition of the police power applicable to the case at bar.

If, from all of the powers of the state governments, those of taxation and of eminent domain are segregated, substantially all of the balance comprise the police power. The latter is the power to preserve the existence of the state and to promote the general welfare of the people in the state. The protection of life, health, safety and morals of the people is unquestionably, and from any view, within that power. The

---

[10]See: Statement by Mr. Justice Van Devanter in Small Co. vs. American Sugar Refg. Co. (1925), 267 U. S. 233, 240, 241, 242, 45 S. Ct. 295, 297, 298, 69 L. Ed. 589, in which, referring to and distinguishing the Levy Leasing Co. vs. Siegel case, he states that the rules and standards provided by the rent laws were sufficiently definite and certain.

---

[11]See: Footnote 8, supra.

promotion of the convenience and comfort of the people is more debatable.

Limitations on the police power, as on all other powers of the state governments, are imposed both by the federal Constitution, as shown above, and by the state constitutions.

With respect to the limitations so imposed by the federal Constitution, those for the benefit of the individual citizen: the contract clause, the due process clause and the equal protection clause, are here material. The limitations imposed by the contract clause have been fully presented in appellant's brief. In view of the issue now under consideration, namely: how far the state may regulate, in an emergency, a business conceded to be a private business, and hence, under the due process and equal protection clauses, not subject to regulation under ordinary conditions, we suggest the following definition:

> "While there is no such thing as absolute freedom of contract, and it is subject to a variety of restraints, they must not be arbitrary or unreasonable. Freedom is the general rule and restraint the exception. The legislative authority to abridge can be justified only by exceptional circumstances. * * *
>
> "Businesses said to be clothed with a public interest justifying some public regulation may be divided into three classes:
>
> "(1) Those which are carried on under the authority of a public grant of privileges. * * *
>
> "(2) Certain occupations regarded as exceptions, the public interest attaching to which [was] recognized from earliest times, * * * [the common callings]. * * * Such are those of the keepers of inns, cabs and grist mills. * * *
>
> "(3) Businesses which, though not public at their

inception, may be fairly said to have reason to be such and have become subject in consequence to some government regulation. They have come to hold such a peculiar relation to the public that this is superimposed upon them. In the language of the cases, the owner by devoting his business to the public use, in effect grants the public an interest in that use and subjects himself to public regulation to the extent of that interest, although the property continues to belong to its private owner and is entitled to protection accordingly."

Wolff Packing Company vs. Court of Industrial Relations (1923), 262 U. S. 522, 534, 535, 43 S. Ct. 630, 632, 633, 67 L. Ed. 1103.

A state cannot, "under the guise of protecting the public, arbitrarily interfere with private business or private lawful occupation, or impose unreasonable and unnecessary restrictions upon them."

"Determination by the Legislature of what constitutes proper exercise of police power is not final or conclusive, but is subject to supervision by the courts * * *."

Burns Baking Company vs. Bryan (1924), 264 U. S. 504, 513, 44 S. Ct. 412, 413, 68 L. Ed. 813, 32 A. L. R. 661.

Meyer vs. Nebraska (1923), 262 U. S. 390, 399, 400, 43 S. Ct. 625, 627, 67 L. Ed. 1042.

The relationship of mortgagor and mortgagee arising out of the business of lending money on the credit of real estate, and the enforcement of the agreed remedies therein, are clearly private matters and are not affected with a public interest. As such they cannot be regulated as is here attempted by Chapter 339. In the case at bar, the Act is aimed only

at regulating, by preventing, the exercise of the agreed remedies in existing mortgages. It does not, and is not intended to, regulate the business of lending money on security of real estate. The only business regulated by the Act, is the business, if it be one, of enforcing the mortgage security in existing mortgages. This is shown by the fact that mortgages executed after the enactment of Chapter 339, or existing mortgages extended to come due after May 1st, 1934, are specifically exempted in the Act (Brief, pp. 17, 18). No attempt whatever is made in the Act to regulate the business of lending money on the security of real estate; no prohibition is made; no licensing is provided; no regulation of interest (*i. e.*, rates charged) is made. Moreover, it is conceded, in the case at bar, that the transaction involved is absolutely lawful in all respects (Brief, p. 24, par. 2). The court below and the appellees concede this; but the appellees argue, as the legislature declared, that nevertheless, under the circumstances, the transaction can be regulated by the state under its police power. But, as we have shown, the Act does not regulate the business of lending money on the security of real estate, or of any business. The Act is aimed only at preventing the mortgagees from exercising their agreed remedies under existing mortgage contracts. Hence, the argument of the appellees, based on the Rent Cases, is reduced to claiming that the enforcement of the agreed remedies in the case at bar is "a business" and "a business affected with a public interest."

Appellant, of course, denies this, and most strenuously. We submit that the mere enforcement of existing and agreed remedies cannot be said to be "a business," or "a business affected with a public interest."

The appellant submits, for the reasons set out in appellant's brief, at pages 22 and 24, that Chapter 339 is invalid

because: (a) the object sought to be obtained is not within the scope and legitimate exercise of the police power within the definition above made; (b) that the enforcement of remedies under existing mortgages is not "affected with a public interest"; (c) the classification is invalid for the reasons set out in the brief, pages 14, 17, 18, 29 and 30; (d) the rules and standards provided are not reasonably definite and certain, as set out in the brief, page 14; and (e) that the extent and effect of the legislation is not a proper exercise of the police power and does not reasonably tend to accomplish a legitimate object within the police power.

Analysis of the Rent Cases.

The Rent Cases expressly held that substantial rights of the parties therein were involved and claimed to be invaded by the rent laws, and that the parties could maintain an action to vindicate those rights[12].

These cases unquestionably went to the extreme in sustaining as valid the exercise of the police power therein involved. The opposite extreme is presented by the case of *Pennsylvania Coal Company vs. Mahon*[13]. The rent laws

---

[12]See: Statement by Mr. Justice Holmes in Chastleton Corp. vs. Sinclair, supra, at Page 547 of Vol. 264 U. S. Rep., and 406 of Vol. 44 S. Ct. Rep.; Statement by Mr. Justice Brandeis in the case of Morrison vs. Work (1925), 266 U. S. 481, 486, 487, 45 S. Ct. 149, 151, 152, and 69 L. Ed. 394; See: Statement by Mr. Justice Stone in his dissenting opinion in the case of Tyson & Brothers vs. Banton (1927), 273 U. S. 418, 452, 47 S. Ct. 426, 436, 71 L. Ed. 718, in which he states, after referring to the Rent Cases, that "self-interest is not permitted to invoke constitutional protection at the expense of the public interest and reasonable regulation of prices."

---

[13](1922) 260 U. S. 393, 43 S. Ct. 158, 67 L. Ed. 322. See: Statement by Mr. Justice Holmes in Frost Trucking Co. vs. Railroad Commission (1926), 271 U. S. 583, 601, 46 S. Ct. 605, 610, 70 L. Ed. 1101, in which the statement quoted in substance in the text is made.

were upheld only because there was presented the following combination of circumstances[14]:

(a) An emergency[15] was declared by the legislature and found by the court to exist; (b) The duration of the laws was limited to the estimated duration of the emergency[16]; (c) There was, in fact and in law, no deprivation of property without due process of law, because the landlords and owners were assured a reasonable compensation[17]; (d) Reasonable and definite standards and rules were provided to accomplish such object[18]; and (e) The legislation was in-

---

[14]See: Statement by Mr. Justice Holmes, who wrote the majority opinions in two of the rent cases and concurred in the others, in the case of Pennsylvania Coal Co. vs. Mahon (Footnote 13 above), in which Mr. Justice Holmes states, at Page 416, of Vol. 260 U. S. Rep., and Page 160 of Vol. 43 S. Ct. Rep., that the rent cases "went to the verge of the law." See similar statement by Mr. Justice Holmes in the Frost case (Footnote 13 above). See: Statement by Mr. Justice Stone in Tyson & Brothers vs. Banton (1927), 273 U. S. 418, 451, 452, 47 S. Ct. 426, 435, 436, 71 L. Ed. 718, referring to the Rent Cases as presenting, in substance, a condition approaching monopoly and other circumstances. See also: Mr. Justice Stone's statement in Ribnik vs. McBride (1928), 277 U. S. 350, 361, 375, 48 S. Ct. 545, 547, 552, 72 L. Ed. 913, in which he states, in substance, that but for the circumstances presented in the Rent Cases, the rent laws would not have been upheld.

---

[15]See: Footnote 14 and statement by Mr. Justice Brandeis in his dissenting opinion in New State Ice Co. vs. Liebmann (1932), 285 U. S. 262, 305, 306, 52 S. Ct. 371, 384 and 385, 76 L. Ed. 747; and statement by Mr. Justice Sutherland in Tyson & Brothers vs. Banton (1927), 273 U. S. 418, 437, 438, 47 S. Ct. 426, 430 and 431, 71 L. Ed. 718, in which he states that unless the emergency existed (and the court so found), the renting of houses would not be a business affected with a public interest.

---

[16]See: Statement to that effect by Mr. Justice Holmes in the Pennsylvania Coal Company vs. Mahon case, at Page 416, Vol. 260 U. S., and Page 160 of 43 S. Ct. Rep.

---

[17]See: Footnote 10, supra, and Footnote 16, supra.

---

[18]See: Footnote 10, supra.

tended to apply and did apply to *residence* property only, that is, rented residence property.

In the case at bar, aside from the contents of the legislative declaration in the Preamble of the Act (Appendix "A," Brief, p. 32), there is (a) absolutely nothing before this Court to show the existence of any emergency[19], nor (b) any rational basis for the period of two years prescribed in the Act, and there is nothing to show that the Act may not be continued indefinitely by succeeding Minnesota legislatures. Moreover, there is (c) no reasonable compensation, and in many cases absolutely no compensation, provided or assured by the Act to mortgagees and other creditors under the Act (see Brief, pp. 14, 15); (d) there are no reasonable and definite standards for applying the Act (see Brief, pp. 14, 15); and (e) the Act is not limited to the protection of residences, that is homesteads as such, but applies indiscriminately to all real property, whether vacant, unimproved, agricultural or urban, and whether used for purposes of residence, investment or speculation (see Brief, p. 5).

---

[19]See: Footnotes 14 and 15, supra. See also briefs filed in the Levy Leasing Company vs. Siegel case, 258 U. S. 242, showing that over a period of five or six years preceding and following the enactment of the rent laws, investigations by successive and continuous committees, some appointed by the legislature, some by the governor and some by the Mayor of the City of New York, resulted in accurate and voluminous reports showing, in detail, the facts found with reference to the conditions upon which the determination of an emergency was made in the first instance by the legislature and upheld thereafter by the courts. These briefs also show that there were many reports by medical officers of the State and City showing that as a result of the wholesale evictions and threats of eviction there were actual physical results causing actual injury to public health, sanitation and morals.

Controlling Distinction in the Rent Cases.

Appellant has stated above, that its challenge of Chapter 339, is consistent with the opinions and decisions of this Court in the Rent Cases. That claim is submitted in view of the following facts:

In addition to the distinctions above made, it conclusively appears that in the Rent Cases, the exercise by the landlords of their rights and remedies to terminate the leases and to recover possession of the premises, was under the circumstances: (1) not contemplated by the parties, at least, not by the tenants; (2) not usual; (3) not agreed between the parties, or, if agreed, agreed in many cases under duress and coercion; (4) inequitable and unjust, because the circumstances presented substantially a condition of monopoly in which the tenants, as parties to the contracts, had little, if any, choice; (5) inimical to society and oppressive because: (a) the rents charged were flagrantly excessive and extortionate and the wholesale evictions were unprecedented in number and constituted abuse of process; and (b) resulted in serious and actual injury[20] to the public health, safety and morals.

In the case at bar, on the other hand, the exercise by the mortgagees of their rights and remedies in foreclosing the mortgages, are: (1) contemplated by the parties; (2) usual; (3) freely agreed between the parties, under no coercion of person or circumstance; (4) fair; (5) not inimical to society, and are lawful in all things: (a) there are no excessive charges, no profiteering or extortion, no abuse of process and (b) no menace or injury to the public health, safety or morals.

---

[20]See Footnote 19.

It is submitted, therefore, that in the Rent Cases, the real basis and controlling reason for upholding the rent laws was that they restrained and prevented inequitable and oppressive conduct by the landlords, and that such conduct was in fact injurious to the public health, safety and morals, and that to prevent and cure all these evils, the business of letting dwellings was regulated under the police power by fixing a reasonable compensation (*i. e.*, rates) and preventing the exercise of the agreed remedies, because under the circumstances, they were inequitable and an abuse of process. This is eminently proper, for such conduct is always subject to the police power. No provision of the federal Constitution, whether contract clause, due process clause, or any other restraint on the states, limits or is intended to limit the police power of the states when exercised for such purposes. Such purposes are unquestionably legitimate from whatever angle viewed, whether during an emergency or otherwise. Mr. Justice Holmes, speaking for the court, in *Brown Holding Company vs. Feldman* (1921), 256 U. S. 170, 41 S. Ct. 465, 65 L. Ed. 877, said, at Page 198:

> "But contracts are made subject to this exercise of the power of the state when *otherwise justified*, as we have held this to be."

Moreover, no one can seriously claim that the Constitution, in any provision, confers or guarantees the right to anyone to engage in such conduct. Neither the contract clause, nor the due process clause, nor any other provision of the Constitution gave the landlords the right to coerce, extort and abuse the people of New York and to commit such actual injuries to the public health, safety and morals.

CONCLUSION.

For all of the foregoing reasons and on the authority of the decisions of this Court, the appellant submits:

First: That the claim of the appellees with respect to the Rent Cases is erroneous and cannot be sustained;

Second: That the decisions of this Court relied upon by the appellant, are in full force and effect, and that the Rent Cases are entirely consistent therewith;

Third: That these decisions sustain the claims of the appellant;

Fourth: That Chapter 339 is, therefore, void under the federal Constitution, because repugnant to, and in violation of, the contract clause, the due process clause and the equal protection of the laws clause thereof; and

Fifth: That the court below erred in holding to the contrary, and in sustaining the validity of Chapter 339.

Appellant respectfully submits, therefore, that this Honorable Court should declare Chapter 339 to be null and void, as unconstitutional under the federal Constitution, and should reverse the decision below.

Respectfully submitted,

ALFRED W. BOWEN,
Counsel for Appellant,
1360 Rand Tower,
Minneapolis, Minnesota.

KARL H. COVELL,
BENJAMIN P. MYERS,
GEORGE W. STRONG,
Of Counsel,
600 Security Building,
Minneapolis, Minnesota.

SUBJECT INDEX

BRIEF ON APPEAL — Page

I. Statement of Case 1

II. Summary of Argument 2

III. Argument—

Point A. The Minnesota Mortgage Moratorium Law does not violate the contract clause contained in Section 10 of Article I of the Constitution of the United States because it is an emergency measure and its enactment was justified under the police power of the state 3

Point B. The Minnesota Mortgage Moratorium Law does not violate the due process clause of the Fourteenth Amendment to the Constitution of the United States .. 3

Point C. The Minnesota Mortgage Moratorium Law does not violate the equal protection clause contained in the Fourteenth Amendment to the Constitution of the United States 46

Point D. The provisions of the Minnesota Mortgage Moratorium Law are severable, and for that reason the court is not called upon to determine the constitutionality of those parts of that law which have no bearing on the case at bar, and moot questions arising out of provisions of that law which have no bearing on the case at bar are not properly before the court 53

Point E. The Minnesota Mortgage Moratorium Law is just, fair and reasonable and benefits both the mortgagor and the mortgagee, and does no more than vest in the courts eequitable powers to cope with emergency conditions 56

IV. Conclusion 58

TABLE OF CASES CITED

Atkin v. Kansas (1903), 191 U. S. 207..... 41

Atlantic Coast Line Railroad Co. v. City of Goldsboro (1914), 232 U. S. 548 12

Barbier v. Connolly (1885), 113 U. S. 27..... 9, 11

Blaisdell v. Home Building and Loan Association (1933) ... Minn. ....; 249 N. W. 334, 893..6, 9, 25, 27

Block v. Hirsh (1921), 256 U. S. 135..... 15

Camfield v. U. S. (1897), 167 U. S. 518..... 9

C. B. & Q. Ry. v. People (1906), 200 U. S. 561.... 9

Chastleton Corporation v. Sinclair (1924), 264 U. S. 543 39

Dorchy v. Kansas (1924), 264 U. S. 286..... 55

810 West End Avenue, Inc. v. Stern (1922), 258 U. S. 242 .....15, 20

First Union Trust Savings Bank v. Division State Bank, et al, American Bar Association Journal (May, 1933) 45

Guttag v. Shatzkin, 230 N. Y. 647; 130 N. E. 929....14, 42

Harry Kresher, Inc. v. Fuchs (1933), 262 N. Y. S. 669 46

Hill v. Wallace (1922), 259 U. S. 44..... 54

Jacobson v. Massachusetts (1905), 197 U. S. 11..... 41

Legal Tender Cases (1870), 12 Wall. 457..... 11

Levy Leasing Co. v. Siegel (1922), 258 U. S. 242..15, 20

Magoun v. Illinois Trust & Savings Bank (1898), 170 U. S. 283 47

Manigault v. Springs (1905), 199 U. S. 473..... 11

Marcus Brown Holding Co. v. Feldman (1921), 256 U. S. 170 .....15, 19, 52

Marcus Brown Holding Co. v. Feldman (1921), 269 F. 306 13

Miller v. Wilson (1915), 236 U. S. 373 52

Missouri, Kansas and Texas Railway Company v. May (1904), 194 U. S. 267..... 50

Mugler v. Kansas (1887), 123 U. S. 623..... 9, 40

New Jersey National Bank & Trust Company v. Lincoln Mortgage Title & Guaranty Company, 105 N. J. Eq. 557 46

New Orleans Gas Co. v. Louisiana Light Co. (1885), 115 U. S. 650 12

Patsone v. Commonwealth of Pennsylvania (1914), 232 U. S. 138 51

People v. LaFetra, 230 N. Y. 429; 130 N. E. 601....13, 41

People of State of New York v. Leo Nebbia (1933), 186 N. E. 694 30

Quong Wing v. Kirkendall (1912), 223 U. S. 59..... 49

Sligh v. Kirkwood (1915), 237 U. S. 52 ..... 9, 10

Southport Petroleum Co. v. Ickes (Equity No. 56024) (Files of Supreme Court of District of Columbia) 32

State ex rel. Lichtscheidl v. Moeller, Sheriff, ... Minn. ....; 249 N. W. 330 33

State v. Circuit Court (1933), ... S. D. ...., 249 N. W. 631 37

State ex rel. Cleveringa v. Klein, ... N. D. ....; 249 N. W. 118 38

State of Oklahoma, ex rel. Edward K. Roth, as Trustee for Ray R. Roth v. W. A. Waterfield, Court Clerk, No. 24650 (Decision not published)..... 33

Suring State Bank v. Giese, 246 N. W. 556 (1933).. 44

Thompson v. Auditor General (1933), 247 N. W. 360.. 28

Union Dry Goods Co. v. Georgia Public Service Corporation (1919), 248 U. S. 372..... 12

Zimmerman, Conservoir, etc et al, S. C. ex rel. v. Gibbes, etc. et al (Decision not published)..... 29

Table of Statutes Cited

United States Constitution:

Art. I, Section 10..... 3

Amendt. XIV, Section 1. Due Process Clause.. 3

Amendt. XIV, Section 1. Equal Protection Clause 46

Minnesota Statutes:

Chapter 339, General Laws Minnesota for 1933 .....1, 3, 46, 53, 56, 58

Textbooks Cited

Black on Constitutional Law (4th Ed.), pages 75 and 366 ..... 9, 54

SUPREME COURT of the UNITED STATES

OCTOBER TERM, 1933

No. 370

HOME BUILDING AND LOAN ASSOCIATION, A CORPORATION,

Appellant,

vs.

JOHN H. BLAISDELL AND ROSELLA BLAISDELL, HIS WIFE,

Appellees.

APPELLEES' BRIEF ON APPEAL

I.

Statement of Case

The appellees adopt the statement of the case as set forth in appellant's brief with the following qualifications and additions:

Subsequent to the passage and approval of Chapter 339 of the General Laws of Minnesota for 1933, and prior to the 28th day of April, 1933, the appellees, in compliance with the provisions of said act, applied to the court for an extension of the time of redemption from the mortgage foreclosure sale in this case by serving notice of motion and petition (R. 46, 47). At the time of the making of the mortgage and at the time of the hearing on appellant's petition for extension of

the time of redemption the dwelling house on appellee's real property was occupied by the appellees as their homestead, as appears from the findings of the court (R. 47), and hence the said real property was appellees' homestead "in the ordinary sense of the word" notwithstanding the fact that certain rooms in the house on said property were rented.

At the time of the hearing on the application for extension the appellees had a substantial equity in the mortgaged premises. The premises were bid in at the foreclosure sale for Thirty-seven Hundred and Ninety-eight One Hundredths Dollars ($3,700.98) on May 2, 1932 (R. 46), and this amount, plus interest thereon from the date of sale represented the value of appellees' interest in the property at the time of the said hearing. The reasonable market value of the premises at the time of the hearing was found by the court to be Six Thousand Dollars ($6,000.00) (R. 47). The reasonable value of the income of said property and the reasonable rental value of said property at the time of said hearing was found by the court to be Forty Dollars ($40.00) per month (R. 47). In its judgment extending the time for redemption the court ordered the appellees to pay Forty Dollars ($40.00) per month during the extended period of redemption from May 2, 1933, the date of the expiration of the original period of redemption (R. 50).

For convenience, in the remainder of this brief, we will refer to Chapter 339 of General Laws of Minnesota for 1933 as "The Minnesota Mortgage Moratorium Law."

II.

Summary of Argument

Point A. The Minnesota Mortgage Moratorium Law does not violate the contract clause contained in Section 10 of Article I of the Constitution of the United States because

it is an emergency measure and its enactment was justified under the police power of the state.

Point B. The Minnesota Mortgage Moratorium Law does not violate the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Point C. The Minnesota Mortgage Moratorium Law does not violate the equal protection clause contained in the Fourteenth Amendment to the Constitution of the United States.

Point D. The provisions of the Minnesota Mortgage Moratorium Law are severable, and for that reason the court is not called upon to determine the constitutionality of those parts of that law which have no bearing on the case at bar, and moot questions arising out of provisions of that law, which have no bearing on the case at bar, are not properly before the court.

Point E. The Minnesota Mortgage Moratorium Law is just, fair and reasonable and benefits both the mortgagor and the mortgagee, and does no more than vest in the courts equitable powers to cope with emergency conditions.

III.

Argument

POINTS A AND B

The Minnesota Mortgage Moratorium Law does not violate the contract clause contained in Section 10 of Article I of the Constitution of the United States because it is an emergency measure and its enactment was justified under the police power of the state.

The Minnesota Mortgage Moratorium Law does not violate the due process clause of the Fourteenth Amendment to the Constitution of the United States.

Because of the close connection between Points A and B, we will discuss them together.

Every contract is entered into subject to the implied limitation that in an emergency its terms may be varied in a reasonable manner under the exercise of the police power of the state. This limitation upon contract rights is as much a part of any contract as if it were incorporated therein in writing and, therefore, this law does not impair the obligation of the mortgage contract between appellant and appellees within the meaning of the contract clause contained in Section 10 of Article I of the Constitution of the United States.

Neither does this law deprive the appellant of its property without due process of law by making provision for an extension of the time of redemption from the mortgage foreclosure sale. On the contrary, it provides for an orderly proceeding to determine what extension, if any, should be made, the amount which must be paid and the other conditions which must be performed as a condition precedent to the making and continuance of the extension. The statute provides that the mortgagee or his assigns shall have an opportunity to be heard and to defend, protect and enforce his rights in said proceeding. Pursuant to this law the appellant was given due notice of the application for an extension. It appeared at the hearing in said proceedings and took part therein. Although the court at said hearing granted an extension of the time of the redemption, it ordered that as a condition precedent to such an extension the appellees must pay the full rental value of the premises during the extended year of redemption.

We concede that in normal times and under normal conditions The Minnesota Mortgage Moratorium Law would be unconstitutional. But these are not normal times and these are not normal conditions. A great economic emergency has

arisen in which the state has been compelled to invoke the police power to protect its people in the possession and ownership of their homes and farms and other real estate from the disastrous effects of the wholesale foreclosure of real estate mortgages which inevitably resulted from the present state wide, nation wide, and world wide economic depression.

General conditions resulting from this depression are well known, and we will not burden the court with a recital of them. However, we feel that a brief statement of conditions in Minnesota in so far as they relate to the necessity of the passage of this law would not be inappropriate.

Minnesota is predominantly an agricultural state. A little more than one half of its people live on farms. At the time this law was passed the prices of farm products had fallen to a point where most of the persons engaged in farming could not realize enough from their products to support their families, and pay taxes and interest on the mortgages on their homes. In the fall and winter of 1932 in the villages and small cities where most of the farmers must market their produce, corn was quoted as low as eight cents per bushel, oats two cents and wheat twenty-nine cents per bushel, eggs at seven cents per dozen and butter at ten cents per pound. The industry second in importance is mining. In normal times Minnesota produces about sixty per cent of the iron of the United States and nearly thirty per cent of all the iron produced in the world. In 1932 the production of iron fell to less than fifteen per cent of normal production. The families of idle miners soon became destitute and had to be supported by public funds. Other industries of the state, such as lumbering and the manufacture of wood products, the manufacture of farm machinery and various goods of steel and iron have also been affected disastrously by the depression.

Because of the increased burden on the state and its poli-

tical subdivisions which resulted from the depression, taxes on lands, which provide by far the major portion of the taxes in this state, were increased to such an extent that in many instances they became confiscatory. Tax delinquencies were alarmingly great, rising as high as 78% in one county of the state. In seven counties of the state the tax delinquency was over 50%. Because of these delinquencies many towns, school districts, villages and cities were practically bankrupt. In many of these political subdivisions of the state local government would have ceased to function and would have collapsed had it not been for loans from the state.

One of the major problems arising out of the depression is the proper handling of mortgage debts. The problem of mortgage debts has been particularly acute in the State of Minnesota because of the fact that Minnesota is an agricultural state and the income of the majority of our people comes from land. Chief Justice Wilson in his concurring opinion in the decision of the Minnesota Supreme Court in the case at bar, *Blaisdell* v. *Home Building & Loan Ass'n* (1933).—Minn. —; 249 N. W. 334, 893, points out that most of the real estate mortgages existing today were contracted when the general price level was about twice, and the farm values were about four times as high as they are today. (R. 29). At the time of the passage of this Mortgage Moratorium Law real estate had practically ceased to have a market value and could scarcely be sold at any price, and the income from real estate was not sufficient in many instances to pay the interest on the mortgage and the taxes on the premises. Our people, with their savings tied up in closed banks, with their earning power greatly reduced or entirely wiped out, were unable to make the payments on their mortgages as they became due. Not only could they not meet these mortgage payments, but they were unable to refinance their loans or sell their properties so as to realize something

out of their equities. Consequently, the number of mortgage foreclosures in this state increased by leaps and bounds until in the spring of 1933 it had reached an all time maximum. The throwing upon the market of these mortgaged premises had the inevitable effect of further depreciating and dragging down real estate values throughout the state. It is obvious that if these foreclosures had been allowed to continue and to increase in number unrestricted and unabated, a large portion of the homes and farms of the people of this state would inevitably have reverted to and become the property of trust companies, banks, insurance companies and other mortgagees.

For several months prior to the passage of the Mortgage Moratorium Act many serious breaches of the peace occurred from time to time throughout the state, especially in the rural districts, in connection with mortgage foreclosure sales, and in many instances these sales were interrupted and prevented by mobs of people, otherwise peaceful and law abiding, who had been driven to desperation by the fear of losing their homes. In some instances mobs comprising more than a thousand people gathered together and forcibly prevented the holding of foreclosure sales. These disturbances increased in violence and in number until the Governor of the state, in the interest of preserving the public peace and the safety of the community, was compelled to and did issue an executive order directing sheriffs to refrain from foreclosing mortgages on homes until the legislature had an opportunity to pass a relief measure to cope with the emergency.

Unfortunately there are many home and farm owners in the State of Minnesota who cannot get any relief from this law because the burden of mortgage indebtedness on their land is too great. However, there are many mortgagors in this state who, if allowed to retain the possession and owner-

ship of their lands will be able to save them if economic conditions improve within a reasonable period of time. In the past history of this country depressions have come, run their course of one year or a few years and then normally prosperous times have returned. May we not expect this depression, although more intense and wider in scope, to run a similar course. This law will enable many owners of mortgaged real estate to retain the ownership and possession of their real estate until such time as economic conditions improve and real estate again has a market value so loans can be refinanced or real estate sold at normal prices. Moreover, the national government has passed laws providing for the making of loans to owners of farms and homes, and when these laws are put into full operation many mortgagors will be able to refinance their loans through the government.

Because of the existence of these conditions it is our contention that the legislature of Minnesota was justified in enacting the Mortgage Moratorium Law as an emergency measure under the police power of the state, and that the law so enacted does not violate either the contract clause or the due process clause of the Constitution of the United States. In support of this contention we submit the authorities which are hereinafter set forth.

Scope of Police Power

The early decisions of the federal courts, as we interpret them, quite generally limited the exercise by the state of its police power to matters affecting the public health, public morals and public safety, but in the last half century this limitation has been abandoned and these courts, as well as many of the state courts, have enlarged by judicial interpretation the scope of this power to meet the requirements

of changing economic and industrial conditions and the growth of the states and the nation. It is now, we think, the consensus of the judicial opinion that the state may exercise its police power not only for the promotion and protection of the public health, public morals and public safety, but also to promote the wealth and prosperity, the comfort, convenience, and happiness, in short, the general welfare of the people of the state.

Black on Constitutional Law (4th Ed.), page 366.
Barbier v. *Connolly* (1885), 113 U. S. 27.
Mugler v. *Kansas* (1887), 123 U. S. 623.
Camfield v. *U. S.* (1897), 167 U. S. 518.
C. B. & Q. Ry. Co. v. *People* (1906), 200 U. S. 561.
Sligh v. *Kirkwood* (1915), 237 U. S. 52.
Blaisdell v. *Home Building and Loan Association* (1933), ... Minn. ....; 249 N. W. 334, 893.

In *C. B. & Q. Ry.* v. *People*, supra, at page 592 the court said:

"The learned counsel for the railway company seem to think that the adjudications relating to the police power of the State to protect the public health, the public morals and the public safety are not applicable, in principle, to cases where the police power is exerted for the general well-being of the community apart from any question of the public health, the public morals or the public safety. * * * We cannot assent to the view expressed by counsel. We hold that the police power of a State embraces regulations designed to promote the public convenience or the general prosperity, as well as regulations designed to promote the public health, the public morals or the public safety. *Lake Shore & Mich. South. Ry.* v. *Ohio*, 173 U. S. 285, 292; *Gilman* v. *Philadelphia*, 3 Wall. 713, 729; *Pound* v. *Turck*, 95 U. S. 459, 464; *Railroad Co.* v. *Husen*, 95 U. S. 470. And the validity of a police regulation, whether established directly by the State or by some

public body acting under its sanction, must depend upon the circumstances of each case and the character of the regulation."

In *Sligh* v. *Kirkwood,* supra, at page 58, the court said:

"The limitations upon the police power are hard to define, and its far-reaching scope has been recognized in many decisions of this court. At an early day it was held to embrace every law or statute which concerns the whole or any part of the people, whether it related to their rights or duties, whether it respected them as men or citizens of the State, whether in their public or private relations, whether it related to the rights of persons or property of the public or any individual within the State. *New York* v. *Miln,* 11-Pet. 102, 139. The police power, in its broadest sense, includes all legislation and almost every function of civil government. *Barbier* v. *Connolly,* 113 U. S. 27. It is not subject to definite limitations, but is co-extensive with the necessities of the case and the safeguards of public interest. *Canfield* v. *U. S.,* 167 U. S. 518, 524. It embraces regulations designed to promote public convenience or the general prosperity or welfare, as well as those specifically intended to promote the public safety or public health. *Chicago, etc., Ry.* v. *Drainage Commissioners,* 200 U. S. 561, 592. In one of the latest utterances of this court upon the subject, it was said: 'Whether it is a valid exercise of the police power is a question in the case, and that power we have defined, as far as it is capable of being defined by general words, a number of times. It is not susceptible of circumstantial precision. It extends, we have said, not only to regulations which promote the public health, morals and safety, but to those which promote the public convenience or the general prosperity.' And further, 'It is the most essential of powers, at times the most insistent, and always one of the least limitable of the powers of government.' *Eubank* v. *Richmond,* 226 U. S. 137, 142."

It was long ago decided in the Legal Tender Cases (1870), 12 Wall. 457, that "It is not to be denied that acts may be adapted to the exercise of lawful power, and appropriate to it, in seasons of exigency, which would be inappropriate at other times." (P. 540). This principle has been reaffirmed by our courts many times since, and it is now well established that in emergencies state and nation alike may, under the police power, pass laws which in normal times would impair the obligation of contracts and deprive persons of their property without due process of law.

In *Barbier* v. *Connolly* (1885) supra, at page 31, the court said:

> "Neither the Amendment (referring to the Fourteenth)—broad and comprehensive as it is—nor any other amendment, was designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education and good order of the people and to legislate so as to increase the industries of the State, develop its resources and add to its wealth and prosperity."

In *Manigault* v. *Springs* (1905), 199 U. S. 473, at page 480, the court said:

> "It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the state from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. This power which in its various ramifications is known as the police power is an exercise of the sovereign right of the government to protect the lives, health, morals, comfort and general welfare of the people, and is

paramount to any rights under contracts between individuals."

In *Atlantic Coast Line Railroad Co.* v. *City of Goldsboro* (1914), 232 U. S. 548, at page 558, the court said:

> "For it is settled that neither the 'contract' clause nor the 'due process' clause has the effect of overriding the power of a state to establish all regulations that are reasonably necessary to secure the health, safety, good order, comfort, or general welfare of the community; that this power can neither be abdicated nor bargained away, and is inalienable even by express grant and that all contracts and property rights are held subject to its fair exercise."

In *Union Dry Goods Co.* v. *Georgia Public Service Corporation* (1919), 248 U. S. 372, at page 376, the court said:

> "Contracts must be understood as made in reference to the possible exercise of the rightful authority of the Government and no obligation of a contract can extend to defeat the legitimate government authority. * * * It is settled that neither the 'contract' clause nor the 'due process' clause has the effect of overriding the power of the State to establish all regulations that are reasonably necessary to secure the health, safety, good order, comfort, or general welfare of the community."

In *New Orleans Gas Co.* v. *Louisiana Light Co.* (1885), 115 U. S. 650, at page 672, the court said:

> "The constitutional prohibition upon state laws impairing the obligation of contracts does not restrict the power of the state to protect the public health, the public morals, or the public safety as the one or the other may be involved in the execution of such contracts."

In *Marcus Brown Holding Co.* v. *Feldman* (1921), 269 F. 306, affirmed in 256 U. S. 170, the court, at page 315, said:

> "It cannot be too often said that a constitution is not a code nor a statute, that it declares only fundamental principles, and is not 'to be interpreted with the strictness of a private contract.' *Legal Tender Cases*, 110 U. S. 421, 4 Sup. Ct. 122, 28 L. Ed. 204. To this doctrine we owe the rulings that even the contract clause of the Constitution does not override the power of the state to establish regulations reasonably necessary to secure the health, comfort, or general welfare of the community—that is, to exercise the police power of the state (*Atlantic, etc., Co.* v. *Goldsboro*, 232 U. S. 548, 34 Sup. Ct. 364, 58 L. Ed. 721); that in like manner 'reasonable restraints' may be placed upon freedom of contract (*Rail & River Co.* v. *Ohio, etc., Comm'n*, 236 U. S. 338, 35 Sup. Ct. 359, 59 L. Ed. 607); and that a Legislature may make police regulations, although they interfere with the full enjoyment of private property, and no compensation be given (*Chicago, etc. Co.* v. *Drainage Comm'n*, 200 U. S. 561, 26 Sup. Ct. 341, 50 L. Ed. 596, 4 Ann. Cas. 1175). Such decisions (and we cite but few of many) reduce the question to this: Are these statutes an exercise of police power reasonably suitable for combating or lessening the evil proved, and therefore constitutional, although at other times and under other circumstances they might plainly be obnoxious to fundamental principles of constitutional government?"

In *People* v. *LaFetra*, 230 N. Y. 429, 442; 130 N. E. 601, 605, the court said:

> "The proposition is equally fundamental that the state may establish regulations reasonably necessary to secure the general welfare of the community by the exercise of its police power, although the rights of private property are thereby curtailed and freedom of contract is abridged. * * * The legislative or police

power is a dynamic agency, vague and undefined in its scope, which takes private property or limits its use when great public needs require, uncontrolled by the constitutional requirement of due process. Either the rights of property and contract must, when necessary, yield to the public convenience, advantage and welfare, or it must be found that the state has surrendered one of the attributes of sovereignty for which governments are founded and made itself powerless to secure to its citizens the blessings of freedom and to promote the general welfare. * * *

Emergency laws in time of peace are uncommon but not unknown. Wholesale disaster, financial panic, the aftermath of war (*Hamilton* v. *Kentucky Distilleries & W. Co.*, 251 U. S. 146, 161, 40 Sup. Ct. 106, 64 L. Ed. 194), earthquake, pestilence, famine and fire, a combination of men or the force of the circumstances may, as the alternative of confusion or chaos, demand the enactment of laws that would be thought arbitrary under normal conditions (*Bowditch* v. *Boston*, 101 U. S. 16, 18, 1[illegible] *American Land Co.* v. *Zeiss*, 219 U. S. 47. Although emergency cannot become the source of power, and although the Constitution cannot be suspended in any complication of peace or war (*Ex parte Milligan*, 4 Wall. 2, 18 L. Ed. 281), an emergency may afford a reason for putting forth a latent governmental power already enjoyed but not previously exercised."

In *Guttag* v. *Shatzkin*, 230 N. Y. 647, 650; 130 N. E. 929, 930, the court said:

"While the states are subject to the contract clause of section 10, article I, and section 1, article XIV of the United States Constitution, the police power of the states may affect contracts and modify property rights without violation of these provisions. Conceding the health, safety, and morals of its citizens to be involved, and the circumstances to justify a proper interference by the state, neither the contract nor due process of

law clause stand in the way. *Union Dry Goods Co.* v. *Georgia Public Service Corporation*, 248 U. S. 372. *These sections of our federal Constitution and the police power of the states harmonize and never conflict.*" (Italics ours)

The Rent Cases

The most important decisions from the standpoint of this case are the three great decisions rendered by the United States Supreme Court in the four cases of *Block* v. *Hirsh* (1921) 256 U. S. 135; *Marcus Brown Holding Co.* v. *Feldman* (1921), 256 U. S. 170; *Levy Leasing Co.* v. *Siegel* (1922), 258 U. S. 242; and 810 *West End Avenue, Inc.* v. *Stern* (1922), 258 U. S. 242, which are known as The Rent Cases. These decisions are particularly significant in connection with the present discussion because they each involve a state of facts very similar to that which confronts the court in passing upon the constitutionality of the Mortgage Moratorium Act.

In the case of *Block* v. *Hirsh*, supra, the court considered the constitutionality of an act of Congress relating to the District of Columbia. This act created a commission with power, upon notice and hearing, to determine whether the rent, service and other terms and conditions of the use and occupancy of apartments, hotels and other rental property in the District of Columbia, were fair and reasonable, and, if found otherwise, to fix fair and reasonable rents, etc., in lieu; it provided that a tenant's right of occupancy should, at his option, continue, notwithstanding the expiration of his term, subject to regulation by the commission, so long as he paid the rent and performed the conditions fixed by his lease or as modified by the commission; reserved, however, to the owner his right to possession for actual bona fide occupancy by himself, his wife, children or dependents, upon

giving a thirty days' notice to quit; made the commission's findings conclusive on matters of fact, but reviewable by the Court of Appeals of the District on matters of law; limited the regulation thus established to a period of two years; and declared that its provisions were made necessary by emergencies growing out of the War, resulting in rental conditions dangerous to the public health and burdensome to public officers, employees and accessories, and thereby embarrassing the Federal Government in the transaction of the public business.

In this case the Supreme Court held:

1. That the declaration of facts by a legislative body "concerning public conditions" that by necessity and duty it must know, is entitled to great respect" by the courts.

2. That circumstances may clothe "the letting of buildings in the District of Columbia with a public interest so great as to justify regulation by law." At page 156 the court said:

> "*Plainly circumstnces may so change in time or so differ in space as to clothe with such an interest what in other times or in other places would be a matter of purely private concern.* It is enough to refer to the decisions as to insurance, in *German Alliance Insurance Co.* v. *Lewis,* 233 U. S. 389; irrigation, in *Clark* v. *Nash,* 198 U. S. 361; and mining, in *Strickley* v. *Highland Boy Gold Mining Co.,* 200 U. S. 527. They sufficiently illustrate what hardly would be denied. They illustrate also that the use by the public generally of each specific thing affected cannot be made the test of public interest. *Mt. Vernon-Woodberry Cotton Duck Co.* v. *Alabama Interstate Power Co.,* 240 U. S. 30, 32, and that the public interest may extend to the use of land. *They dispel the notion that what in its immediate aspect may be only a private transaction may not be raised by its class or character to a public affair.*" (Italics ours.)

3. That the law was not an unconstitutional restriction of the owners' dominion or right of contract or a taking of his property for a use not public. The court said:

> "The fact that tangible property is also visible tends to give a rigidity to our conception of our rights in it that we do not attach to others less concretely clothed. But the notion that the former are exempt from the legislative modification required from time to time in civilized life is contradicted not only by the doctrine of eminent domain, under which what is taken is paid for, but by that of the police power in its proper sense, *under which property rights may be cut down, and to that extent taken, without pay.* Under the police power the right to erect buildings in a certain quarter of a city may be limited to from eighty to one hundred feet. *Welch* v. *Swasey*, 214 U. S. 91. Safe pillars may be required in coal mines. *Plymouth Coal Co.* v. *Pennsylvania*, 232 U. S. 531. Billboards in cities may be regulated. *St. Louis Poster Advertising Co.* v. *St. Louis*, 249 U. S. 269. Watersheds in the country may be kept clear. *Perley* v. *North Carolina*, 249 U. S. 510. *These cases are enough to establish that a public exigency will justify the legislature in restricting property rights in land to a certain extent without compensation.* But if to answer one need the legislature may limit height, to answer another it may limit rent. We do not perceive any reason for denying the justification held good in the foregoing cases to a law limiting the property rights now in question if the public exigency requires that. The reasons are of a different nature but they certainly are not less pressing.
>
> "The main point against the law is that tenants are allowed to remain in possession at the same rent that they have been paying, unless modified by the Commission established by the act, and that thus the use of the land and the right of the owner to do what he will with his own and to make what contracts he pleases are cut down. But if the public interest be

established the regulation of rates is one of the first forms in which it is asserted, and the validity of such regulation has been settled since *Munn* v. *Illinois*, 94 U. S. 113." (P. 155.) (Italics ours.)

4. That such a regulation was justified as a temporary measure, even if it might not be upheld as a permanent regulation. The court said: *"A limit in time, to tide over a passing trouble, well may justify a law that could not be upheld as a permanent change."* (P. 157) (Italics ours)

5. That machinery is provided to secure the landlord a reasonable rent. The court says:

> "It may be assumed that the interpretation of 'reasonable' will deprive him in part at least of the power of profiting by the sudden influx of people to Washington caused by the needs of Government and the war, and thus of a right usually incident to fortunately situated property—of a part of the value of his property as defined in *International Harvester Co.* v. *Kentucky*, 234 U. S. 222. *Southern Ry. Co.* v. *Greene*, 216 U. S. 400, 414. But while it is unjust to pursue such profits from a national misfortune with sweeping denunciations, the policy of restricting them has been embodied in taxation and is accepted. *It goes little if at all farther than the restriction put upon the rights of the owner of money by the more debatable usury laws.*" (P. 157.) (Italics ours.)

6. *That the court will not pass upon the wisdom of the means adopted by the legislative body if the end in view is justifiable.*

The three other cases all have to do with the so-called "housing acts" which were passed by the legislature of New York in 1920. These laws were passed on September 27, 1920. They recite the existence of an emergency and provide

they shall not be applicable to buildings in course of construction or commenced after the passage of the laws, and that they shall be effective only until November 1, 1922. These laws were made applicable only to a city having a population of one million or more, or to a city in a county adjoining any such city. They prohibited the bringing of summary proceedings and actions in ejectment against tenants to recover the possession of real property occupied for dwelling purposes, except in certain cases not here material. These laws provided that it should be a defense in an action for rent accruing under an agreement for dwellings that such rent was unjust and unreasonable, and that the agreement under which the same is brought was oppressive. They permitted the landlord to plead and prove in such action a just, fair and reasonable rent and to recover judgment therefor or institute a separate action for a recovery thereof, and also provided that if the judgment recovered for rent was not paid the landlord should be entitled to immediate possession of the premises.

In the case of *Marcus Brown Holding Co.* v. *Feldman*, supra, the owner of an apartment house brought a suit for the purpose of ousting certain holdover tenants by means of mandatory injunction. The tenants were holdovers after the lease had expired, claiming the right to possession as occupants of the premises for dwelling purposes, under the above mentioned New York laws, and offered to pay a reasonable rent and any reasonable increase in rent as the same might be determined by a court of competent jurisdiction. The tenant's lease expired on September 30, 1920, three days after the laws were passed. The lease contained a covenant to surrender possession at the termination thereof. Before the passage of the new laws, another lease of the premises had been made to go into effect on October 1, 1920. It was claimed by the apartment house owner that the

laws under which the tenant claimed the right of possession were unconstitutional. The court found that the laws were constitutional. "The chief objections to these acts," said the court, "have been dealt with in *Block* v. *Hirsh.*" As to the objection that the laws impair the obligation of the contracts of the lessee to surrender possession and of the new lease which was to go into effect on October 1, 1930, the court said: *"but contracts are made subject to this exercise of the power of the State when otherwise justified, as we have held this to be."* (P. 198) (Italics ours)

In the case of *Levy Leasing Co.* v. *Siegel and* 810 *West End Avenue Inc.* v. *Stern,* supra, which were decided in the same opinion, the Supreme Court of the United States again passed upon the constitutionality of these New York "housing acts." In the first of these cases it was alleged that an apartment was leased to the defendant from October 1, 1918 to October 1, 1920 at the stipulated rental of $1,450.00 per annum payable in equal monthly installments in advance. That while in possession under that lease in May, 1920, and before the housing laws were passed, the defendant executed a new lease for two years beginning at the expiration of the former lease on October 1, 1920, at a rental increased to $2,160.00 payable in equal monthly installments in advance, and that the defendant refused to pay the installment due on October 1, 1920. Judgment for one month's rent was prayed for. The defendant admitted the execution of the scond lease but averred that the second lease was signed under coercion and duress of threats of eviction, and that the rent stipulated for was "unjust, unreasonable and oppressive." He offered to pay the same amount of rent as was paid for the preceding month and asserted the right to continue in possession under the emergency acts.

In the second case it was alleged that the defendant is a tenant holding over after expiration of his lease, and that he

refused to surrender possession as he stipulated in his lease to do and that he claimed the right to retain possession under the emergency housing laws which suspended the right of action to recover possession except under circumstances which were not applicable to the case. In upholding the constitutionality of these laws the court said:

> "In terms the acts involved are 'emergency' statutes and, designed as they were by the legislature to promote the health, morality, comfort and peace of the people of the State, they are obviously a resort to the police power to promote the public welfare. They are a consistent inter-related group of acts essential to accomplish their professed purposes.
>
> "The warrant for this legislative resort to the police power was the conviction on the part of the state legislators that there existed in the larger cities of the State a social emergency, caused by an insufficient supply of dwelling houses and apartments, so grave that it constituted a serious menace to the health, morality, comfort, and even to the peace of a large part of the people of the State. *That such an emergency, if it really existed, would sustain a resort, otherwise valid, to the police power for the purpose of dealing with it cannot be doubted, for, unless relieved, the public welfare would suffer in respects which constitute the primary and undisputed, as well as the most usual, basis and justification for exercise of that power.*" (P. 245.) (Italics ours.)

In its decision the court says that the ~~first~~ second case presents precisely the same questions of fact and law as the *Marcus Brown Holding Co.* case presented, and must be ruled thereby.

As to the ~~second~~ first case, in answer to the claim that the impairment of contracts clause of the constitution was not considered or decided in the *Marcus Brown Holding Co.* case, the court quoted from the decision in said case to show

that it had passed upon the impairment of contracts clause in that case, and stated that the decision in that case was binding.

It was also urged that the law providing for the recovery of rent was invalid because of the provision "It shall be a defense to an action (by the landlord) that such rent (demanded) is unjust and unreasonable and that the agreement under which the same is sought to be recovered is oppressive" was too indefinite a standard to satisfy the due process of law clause of the Constitution.

In answer to this objection the court said: "The standard of the statute is as definite as the 'just compensation' standard adopted in the Fifth Amendment to the Constitution and therefore ought to be sufficiently definite to satisfy the Constitution." (P. 250.)

With respect to the right of the legislature to make modifications of remedial statutes, the court said: "Given a constitutional substantive statute, enacted to give effect to a constitutional purpose, the States have a wide discretion as to the remedies which may be deemed necessary to achieve such a result and it is very clear that that discretion has not been exceeded in this instance by the State of New York." (P. 250)

Let us compare the more salient provisions of the congressional statute and the New York laws, which were passed upon in the so-called rent cases, with the Minnesota Mortgage Moratorium Act now under consideration. The laws passed upon in the rent cases all declared the existence of an emergency. The Mortgage Moratorium Law also declared the existence of an emergency. The laws in the rent cases were in operation for approximately two years. The Mortgage Moratorium Law is also operative for a period of approximately two years. The statutes construed in the Rent Cases interfered with contract rights yet provided that by

the decision of a court or commission reasonable compensation should be given in lieu of the contract rights interfered with. The Mortgage Moratorium Act also interferes with contract rights and in lieu of the contract rights so interfered with provides for the payment of such amount as to a court of equity shall under all circumstances seem just and equitable.

Indeed, it seems clear that the laws construed in the so-called Rent Cases interfere more with contract rights than does the statute which is now before this court. Under the laws construed in the so-called Rent Cases, providing the tenant complied with the conditions imposed, his right of occupancy continued for a period of two years after the passage of the laws as a matter of right, notwithstanding the expiration of his lease. In this Mortgage Moratorium Act, the owner of the mortgaged premises is not entitled to any extension of the year of redemption, as a matter of right, and can only get such extension if and when the court deems that such extension is justifiable.

It is true that the laws construed in the so-called Rent Cases give relief only to tenants who are actually occupying the real estate for dwelling purposes, while the Mortgage [illegible] applies to all real estate whether occupied by the owner of the mortgaged premises as a dwelling or otherwise. However in the case now before this court the appellees [illegible] relief [illegible] the Emergency Housing Laws are concerned, but the act of Congress which was construed in Block v. Hirsh relates to the use and occupancy of apartments, hotels and other rental property. The premises involved in the Block case were used for business purposes.

The statement in the last paragraph on page 23 of appellees' brief to the effect that the laws construed in the so-called Rent Cases give relief only to tenants who are actually occupying real estate for dwelling purposes is too broad. It is true insofar as the Emergency Housing Laws are concerned, but the act of Congress which was construed in Block v. Hirsh relates to the use and occupancy of apartments, hotels and other rental property. The premises involved in the Block case were used for business purposes.

[illegible] present emergency we see no sound reason for differentiating between real property upon which the mortgagor lived and [illegible] mortgaged real property belonging to him through which he makes his livelihood. Moreover it is impossible to disassociate property in homes from property in other forms

that it had passed upon the impairment of contracts clause in that case, and stated that the decision in that case was binding.

It was also urged that the law providing for the recovery of rent was invalid because of the provision "It shall be a defense to an action (by the landlord) that such rent (demanded) is unjust and unreasonable and that the agreement under which the same is sought to be recovered is oppressive" was too indefinite a standard to satisfy the due process of law clause of the Constitution.

In answer to this objection the court said: "The standard of the statute is as definite as the 'just compensation' standard adopted in the Fifth Amendment to the Constitution and therefore ought to be sufficiently definite to satisfy the Constitution." (P. 250.)

With respect to the right of the legislature to make modifications of remedial statutes, the court said: "Given a constitutional substantive statute, enacted to give effect to a constitutional purpose, the States have a wide discretion as to the remedies which may be deemed necessary to achieve such a result and it is very clear that that discretion has not been exceeded in this instance by the State of New York." (P. 250.)

The statement in the last paragraph on page 23 of appellees' brief to the effect that the laws abrogated in the so-called Rent Cases give relief only to tenants who are actually occupying real estate for dwelling purposes is too broad. It is true insofar as the New York Housing laws are concerned, but the act of Congress which was construed in Block v. Hirsh to be constitutional and the Minnesota Mortgage Moratorium Act now under consideration. The laws passed upon in the rent cases all declared the existence of an emergency. The Mortgage Moratorium Laws also declared an emergency to exist. The rent laws involved in the Block case were in operation for approximately two years. The Mortgage Moratorium Law is also operative for a period of approximately two years. The statutes construed in the Rent Cases interfered with contract rights yet provided that by

the decision of a court or commission reasonable compensation should be given in lieu of the contract rights interfered with. The Mortgage Moratorium Act also interferes with contract rights and in lieu of the contract rights so interfered with provides for the payment of such amount as to a court of equity shall under all circumstances seem just and equitable.

Indeed, it seems clear that the laws construed in the so-called Rent Cases interfere more with contract rights than does the statute which is now before this court. Under the laws construed in the so-called Rent Cases, providing the tenant complied with the conditions imposed, his right of occupancy continued for a period of two years after the passage of the laws as a matter of right, notwithstanding the expiration of his lease. In this Mortgage Moratorium Act, the owner of the mortgaged premises is not entitled to any extension of the year of redemption, as a matter of right, and can only get such extension if and when the court deems that such extension is justifiable.

It is true that the laws construed in the so-called Rent Cases give relief only to tenants who are actually occupying the real estate for dwelling purposes, while the Mortgage Moratorium Act is applicable to all real estate, whether occupied by the owner of the mortgaged premises as a dwelling or otherwise. However, in the case now before this court the applicants for relief occupied the mortgaged premises as their home and hence were in exactly the same position as were the lessees who were entitled to relief in the measures construed in the so-called Rent Cases. In any event, in the present emergency we see no sound reason for differentiating between real property upon which the mortgagor dwells and other mortgaged real property belonging to him through which he makes his livelihood. Moreover it is impossible to disassociate property in homes from property in other forms.

Take away from the plumber his shop; from the grocer, his store; from the artist, his studio, and you take away that means of livelihood which alone makes it possible for him to keep and maintain his home. It follows that in arguing for the validity of this act in its application, not alone to homes, but to all mortgaged property, we are in effect arguing for those things which are the very foundation stones of this commonwealth, the maintenance of the home and the retention of that general distribution of the wealth of this nation without which a general distribution of the ownership of homes cannot continue.

It is certainly true that the state is founded upon the home. It is likewise true that the ownership of the home by the occupant thereof is an important factor in building a sound and stable home and thereby a sound and enduring state. It is likewise true that a general distribution among the people of a fair proportion of the wealth of the nation is one of the prerequisites of a peaceful and happy commonwealth.

The emergency which was found to exist at the time of the passage of the laws in the Rent Cases is simply not comparable with the emergency which now exists in the State of Minnesota. The emergency which gave rise to the enactment of these laws grew out of housing conditions existing in the District of Columbia and a few cities in the state of New York shortly after the World War, in a period of prosperity. The present emergency which necessitated the passage of this Mortgage Moratorium Law is based on an economic depression of unparalleled magnitude and severity which exists not only in the State of Minnesota and in the United States but in the whole civilized world.

At the time the Courts held that an emergency existed, which justified the enactment of this housing legislation, there was a job for every man that would work and there

was a living wage paid for the labor performed. Houses were scarce, to be sure, and rents were high, but men were not starving and freezing.

Compare if you will the situation in Minnesota. Many of our farmers have lost or are in danger of losing their homes by tax sales or mortgage foreclosures and produce has been bringing a price that will scarcely pay their taxes, and the interest on their mortgages. The home owners of the cities are in no better plight; they cannot find employment; their small reserves are exhausted; the banks that held the savings of many of them are closed and in addition there is the ever present menacing danger of wide-spread rioting and lawlessness by people otherwise peaceful and law-abiding about to be rendered homeless and shelterless.

In the Rent Cases the Supreme Court recognized the principle that emergencies for legislative purposes might arise from economic and business conditions, but it is still claimed by some that an emergency to justify the exercise of the police power must arise from some extraordinary and unexpected catastrophe such as floods, earthquakes and other disturbances of nature.

Justice Olson of the Supreme Court of Minnesota, in his concurring opinion in the case at bar, *Blaisdell* v. *Home Building and Loan Association*, supra, disposes of this contention in the following language:

> "The reason why a flood or an earthquake may create an emergency is not because they are catastrophes of nature, but because of their widespread destruction of the property and homes of thousands of people, causing want and suffering to a great number of people and injury and danger to public welfare. The present nation wide and world wide business and financial crisis has the same results as if it were caused by flood, earthquake, or disturbance in nature. It has deprived millions of persons in this nation of their

employment and means of earning a living for themselves and their families; it has destroyed the value of and the income from all property on which thousands of people depended for a living; it actually has resulted in the loss of their homes by a number of our people and threatens to result in the loss of their homes by many other people in this state; it has resulted in such widespread want and suffering among our people that private, state and municipal agencies are unable to adequately relieve the want and suffering, and congress has found it necessary to step in and attempt to remedy the situation by federal aid. Millions of the people's money were and are yet tied up in closed banks and in business enterprises.

To say that economic crises are to be anticipated is no good ground for making any distinction. Floods are recurring events, at least in the Ohio and Mississippi valleys. Earthquakes are recurring events, at least on the Pacific coast.

"The test of an emergency is not the cause thereof but the resulting public want, suffering and danger. The cause, whatever it may be, produces the emergency, but is not itself the emergency. A disease may be caused by a germ, but the germ is not the disease. The disease is the effect on the human body caused by the germ. So the present emergency is not the business and financial crisis, but the widespread loss, suffering and want of a great number of the people of this state, and the impairment of and danger to the public welfare. The situation presented to the legislature was of unprecedented magnitude, duration, and disastrous effect on the people. Prior economic disturbances in this state were of comparatively minor importance. Prior to 1880 we had comparatively few people affected by such crises. There was no widespread loss of employment or of homes. There were great unused natural resources and great opportunities for people to start anew and regain their losses. It is not so today. Such crises since that date, up to the present, have been of comparatively short duration,

and not very widespread or serious. Much more could be said on the subject, but I believe what has already been stated is entirely sufficient to show that the legislature was confronted with a vital crisis, and was justified, if not required, in enacting any needed laws to relieve the situation under its police powers, and for the public welfare of the state." (R. 31, 32.)

Concluding and summarizing our argument with reference to the Rent cases, we submit that the statutes which were construed in those cases are fundamentally the same as the Mortgage Moratorium Act that the emergency which brought about the enactment of the laws which were upheld in those cases was insignificant as compared to the emergency which necessitated the passage of the Mortgage Moratorium Law, and that the basic legal principles upon which the courts decided those cases are controlling in the case at bar. We quote the following applicable statement made by Justice Holt in the majority opinion of the Minnesota Supreme Court in the case at bar, *Blaisdell* v. *Home Building and Loan Association,* supra, comparing the statutes construed in the Rent Cases and the Mortgage Moratorium Law:

"To us it appears about as much of public concern whether numerous owners of homes and lands—providing the necessary shelter and means of livelihood—must lose them because a temporary unforeseen economic depression prevents a redemption within the time the law or contract permits, as that certain tenants who are in possession shall remain in spite of the terms of the lease because of the temporary scarcity of available quarters. * * * the courts found the emergency and its relief one of sufficient public interest to permit the police power of the state to impair the obligation of contracts. It appears to us that the economic emergency which now threatens the loss of homes and lands which furnish those in possession the

necessary shelter and means of subsistence is an equally potent cause for the enactment of chapter 339, L. 1933, under the police power of the state, that the housing emergency was in Washington and New York, which the Supreme Court of the United States deemed sufficient for the enactment of the relief statutes for those cities. We have not overlooked the fact that Mr. Justice Holmes, who spoke for the majority in *Block* v. *Hirsh* and *Marcus Brown Co.* v. *Feldman*, supra, in *Pennsylvania Coal Co.* v. *Mahon*, 260 U. S. 393, said that the cases mentioned went 'to the verge' of what was permissible under the constitutional limitations. However, to us no more of public health or public welfare seems involved in the extension of the tenancy to certain tenants then in possession of shelter than in the extension of the occupation of homes, shelter, or means of subsistence to mortgagors and judgment debtors in possession. That the courts may doubt the wisdom of the law is no ground upon which to declare it invalid. It is to be presumed constitutional until the contrary appears beyond a reasonable doubt. *Dunnell*, Minn. Dig. Sections 1605 and 8931." (R. 26.)

Recent Emergency Legislation Which Has Been Upheld as Constitutional

In the case of *Thompson* v. *Auditor General*, 247 N. W. 360, which was decided in March, 1933, the Supreme Court of Michigan held unconstitutional a state law postponing the sale of lands for taxes in anticipation of the payment of which money had been advanced and notes issued, which were to be retired from the taxes when collected.

A few days later the court reversed itself and filed a supplemental opinion as follows:

"The legislative acts considered in this case contain no declaration that an emergency exists which requires special and temporary legislation under the police

powers of the State. The decision filed is upon the law unaffected by emergency police powers. It now having been shown to the court that the legislative acts considered were in effect intended to be temporary and emergency legislation under the police power of the state, and in view of the fact that an emergency exists and it appearing that other legislation is contemplated to meet the crisis, we desire to make it clear that the decision in this case is not to be taken as determinative of the exercise of the police power by the legislature. In these circumstances, the writ of mandamus being discretionary we have decided that it should not issue."

This supplementary opinion is not given in the printed reports of the case, but is referred to in a note. The foregoing is taken from a certified copy of the supplemental opinion which was furnished by the clerk of the Supreme Court of Michigan.

In the case of *Zimmerman, Conservator*, etc. et al. S. C. ex rel. v. *Gibbes*, etc., et al. the Supreme Court of the State of South Carolina, on May 11, 1933, held that the South Carolina Emergency Banking Act of 1933 giving the governor of the State plenary powers to supervise and control banks and prohibiting the institution of legal proceedings against banks without the governor's written approval is not unconstitutional on the ground that it deprives the depositors of an insolvent bank, precluded thereby from instituting court proceedings for the appointment of a receiver and the liquidation of the bank's assets, of their property without due process of law; or on the ground that it prevents their collection of the stockholders' liability guaranteed to them by the constitution; or on the ground that it denies them the right of a speedy remedy in the courts for the redress of a wrong.

The court further held that the act is a valid exercise of

the police power for the common good and the general welfare in view of the serious conditions prevailing in banking circles prior to and at the time of the passage of the act. (So far as we have been able to discover the foregoing South Carolina case has not been published in the reports.)

In the case of *The People of the State of New York* v. *Leo Nebbia* (1933), 186 N. E. 694, the Court of Appeals of New York held that a New York statute (Laws 1933, ch. 158) which creates a Milk Control Board and directs the Board until March 31, 1934, to fix the minimum wholesale and retail prices for milk handled within the State for fluid consumption and authorizes it, if it sees fit, to fix the maximum prices, and which empowers the Board to exclude from the milk business any person who violates the statute or any order of the Board, is not, in so far as it provides for the fixing of minimum prices for milk, unconstitutional on the ground that it abridges the property rights of and interferes with the freedom of contract of milk dealers in violation of the due process clauses of the State and Federal constitutions. Because the statute was enacted as a temporary measure to meet an existing emergency and declares that during such emergency the milk business is affected with the public health and interest it was held that the statute constituted a valid exercise of the police power to promote the public welfare during such an emergency, the Act providing for a price which will yield a 'reasonable return' to the producer and the milk dealer.

In this case the court said:

> "Doubtless the statute before us would be condemned by an earlier generation as a temerarious interference with the rights of property and contract (*Matter of Jacobs*, 98 N. Y. 98, 50 Am. Rep. 636; *Lochner* v. *New York*, 198 U. S. 45, 25 S. Ct. 539,

49 L. Ed. 937, 3 Ann. Cas. 1133); with the natural law of supply and demand. But we must not fail to consider that the police power is the least limitable of the powers of government and that it extends to all the great public needs; that constitutional law is a progressive science; that statutes aiming to establish a standard of social justice, to conform the law to the accepted standards of the community, to stimulate the production of a vital food product by fixing living standards of prices for the producer, are to be interpreted with that degree of liberality which is essential to the attainment of the end in view (*Austin* v. *City of New York,* supra, page 117 of 258 N. Y., 179 N. E. 313); and that mere novelty is no objection to legislation (*People ex rel. Durham Realty Corp.* v. *La Fetra,* 230 N. Y. 429, 130 N. E. 601, 16 A. L. R. 152).

"The state courts should uphold state regulation whenever possible. They should be clearly convinced that a statute is unconstitutional before they declare it invalid. *Cf. Ives* v. *South Buffalo Ry. Co.,* 201 N. Y. 271, 91 N. E. 431, 34 L. R. A. (N. S.) 162, Ann. Cas. 1912B, 156, with *Arizona Employers' Liability Cases,* supra; also cf. *People ex rel. Rodgers* v. *Coler,* 166 N. Y. 1, 59 N. E. 716, 52 L. R. A. 814, 82 Am. St. Rep. 605, with *Atkin* v. *Kansas,* supra.

"With full respect for the Constitution as an efficient frame of government in peace and war, under normal conditions or in emergencies, with cheerful submission to the rule of the Supreme Court that legislative authority to abridge property rights and freedom of contract can be justified only by exceptional circumstances and, even then, by reasonable regulation only, and that legislative conclusions based on findings of fact are subject to judicial review, we do not feel compelled to hold that the 'due process' clause of the Constitution has left milk producers unprotected from oppression and to place the stamp of invalidity on the measure before us.

"With the wisdom of the legislation we have naught to do. It may be vain to hope by laws to oppose the

general course of trade. The English Parliament, unhampered by the limitations of a written constitution, adopted statutes which directly fixed or empowered certain persons to fix, the prices of wine and coal. (6 Holdsworth's History of English Law, p. 346.) Yet it is said that: 'The growth of the capitalistic organization of all branches of industry will strengthen the tendency to allow prices to be determined by relation to supply and demand.' *Holdsworth,* supra.

"We are unable to say that the Legislature is lacking in power, not only to regulate and encourage the production of milk, but also, when conditions require, to regulate the prices to be paid for it, so that a fair return may be obtained by the producer and a vital industry preserved from destruction. *Hamilton, 'Affectation with Public Interest,'* 39 *Yale Law Journal,* 1089-1101. The policy of noninterference with individual freedom must at times give way to the policy of compulsion for the general welfare."

This case is before this court for review and the argument here has been set for December 4th next.

In the case of *Southport Petroleum Co.* v. *Ickes* (Equity No. 56024), the Supreme Court of the District of Columbia, in refusing to enjoin Secretary Ickes from exercising powers derived from the President under the National Industrial Recovery Act, declared that "necessity confers many rights and privileges which otherwise would not exist," and added that, while the course of the Constitution is not set aside in such circumstances, yet its construction must be in the light of and to some extent subject to the primal and fundamental concept of the necessity for self-preservation. The court forcefully pointed out that where, after a legislative declaration of the national emergency, Congress conferred authority upon the Executive to meet the crisis, "every presumption is in favor of the validity of the authority so granted * * * The court will not lightly exercise its power

in any way to complicate the problem of the legislative and executive departments in the present emergency."

In the case of *State ex rel. Lichtscheidl* v. *Moeller, Sheriff*, ... Minn. ...., 249 N. W. 330, which was decided on July 7, 1933, the Supreme Court of the State of Minnesota held that a statute authorizing sheriffs to adjourn mortgage foreclosure sales for not to exceed ninety days was a valid emergency measure enacted under the police power, the exercise of which was justified by existing critical and financial crisis, there being no showing that the statute substantially obstructed or retarded enforcement or diminished value of mortgage contracts. On page 333 the court said:

> "The Legislature, coming from all parts of the state, at the time it passed chapter 44, Laws 1933, had full knowledge of the critical situation then existing and deemed it necessary to enact the law as an emergency measure, under the police power, to temporarily protect owners of property and homes, and for the public welfare and protection."

In the case of *State of Oklahoma, ex rel. Edward K. Roth*, as Trustee for *Ray R. Roth* v. *E. A. Waterfield*, Court Clerk, No. 24650, which was decided on October 17, 1933, the Supreme Court of the State of Oklahoma held constitutional those parts of a mortgage moratorium law which vested in the trial courts a judicial discretion to grant continuances of mortgage foreclosure actions in proper cases upon conditions protecting the rights of the mortgagees and providing compensation for delays thus afforded, and held unconstitutional those parts of the statute which arbitrarily delay mortgage foreclosure proceedings without making provisions for compensating mortgagees and without providing for the protection of the rights of the mortgagees.

In this case, which was brought subsequent to the passage

of the moratorium act to foreclose a mortgage on real estate executed prior to that time, the plaintiff applied for a writ of mandamus to compel the defendant, as clerk of court, to issue a summons requiring defendant to answer twenty days after the return date. The clerk claimed that under the mortgage moratorium act the time allowed to answer should be nine months instead of twenty days. Under the laws of Oklahoma, which were in force and effect at the time of the passage of the moratorium law and the execution of the mortgage, a defendant in an action brought to foreclose a mortgage or other lien upon real estate had twenty days in which to answer. Section 1 of the mortgage moratorium law provides that in all actions to foreclose mortgages or other liens on real estate which had been commenced prior to the passage of the act, and in which no answer had been interposed, the defendant should not be held to answer until the expiration of nine months after date of the service of the summons on the defendant who is the record owner of the mortgaged real estate, and in all such suits commenced after the passage of the law the defendants were allowed nine months after the date of the service of the summons on the defendant who is the record owner of the mortgaged premises, within which to answer. Section 1 of the law also provides that in all actions pending at the time of the passage of the law where the answers had been filed but trials had not been had, no court should render judgment therein until the expiration of nine months after the passage and approval of the law. Sections 2 and 3 of the act provide as follows:

> "Section 2. For a period of two (2) years from and after the approval of this Act, the District Judge, or the Judge of the Superior Court of the County in which any real estate mortgage foreclosure of a deed of trust, or other instrument, the security of which is

real estate, is hereby vested with the jurisdiction and discretion of granting a continuance of said cause, upon his own motion, or upon application of the owner of said property, in person, or by his attorney, and upon such terms and for such times as said Judge may deem best.

"Section 3. The Judge of said Court shall continue said cause for such time as he may deem best, or when it may be made to appear to the court that:

(First), the owner shall pay, at any time before confirmation of sale, the accruing interest and all taxes due upon said property; or:

(Second), At any time before confirmation of sale, where the said owner shall pay or cause to be secured, a reasonable rental for the time or term which said Judge shall order said cause to be continued; or:

(Third), At any time before confirmation of sale, where it shall appear that the value of the property is sufficient to satisfy the lien, together with the cost, and the owner shall pay or otherwise secure the taxes due upon said land."

Section 7 of the act provided that it should remain in force for a period of two years from and after the date of its approval. Section 8 of the act provided that the provisions of the act should be severable and if any clause, sentence, paragraph or section thereof was held void the decision of the court should not affect or impair any of the remaining parts of the act. Section 9 of the act declared the existence of an emergency.

In discussing the authority of the legislature to pass a law altering the terms of the contract, including the laws which the court construed to be a part thereof, the court said:

"* * * changes in the obligations of contracts may be made when made as a proper exercise of the police power, not because constitutions may be suspended by police power but because the right to legislate in the exercise of that power is a part of the existing law of the state at the time of the execution of the contract, and as such enters into the terms and provisions of the contract in the same manner that statutes prescribing procedure becomes a part of the contract.

"It may be said that all property rights including contracts are subject to the proper exercise of the police power, and in that respect it is often said that individual rights to property being subject to the exercise of this power are qualified as distinguished from absolute.

"Having arrived at this conclusion the question of the constitutionality in so far as it relates to the clauses concerning the obligation of contracts now presents the narrower question. Is the subject matter of the act in question within the proper field of the police power?"

As to whether the emergency upon which the act was based was sufficient to authorize the legislature to invoke the police power of the state, the court said:

"In view of the gravity of the economic situation and its effect in preventing mortgagors meeting the full amount of the mortgage indebtedness on the due date thereof and its further effect in destroying competitive bidding at foreclosure sales and in view of the eminence of the authority which has approved such legislation we have concluded that the situation is such as to warrant a temporary interference with contract rights through the enactment under the police power of appropriate legislation that does not violate constitutional provisions and in which proper provision

> is made for the protection of the rights of the mortgagee during the period of the delay."

The court reached the conclusion that Section 1 was invalid for the reason that it arbitrarily delays mortgage foreclosure actions without adequate provision for protection of the rights of the mortgagee during the period of delay.

The court further held that the remainder of the law was constitutional as a fair and reasonable exercise of the police power of the state when interpreted to vest in the district court the power to exercise judicial discretion in granting continuances on account of existing economic conditions in that class of cases only when (1) the owner shall pay at any time before confirmation of sale, the accruing interest and all taxes due upon said property; (2) before confirmation of sale when the owner shall pay or cause to be secured a reasonable rental value for the time or term which said judge shall order said cause to be continued; (3) where before confirmation, it shall appear that the value of the property is sufficient to satisfy the lien and costs of foreclosure, and the owner shall pay or otherwise secure taxes due upon said lands; or (4) when the district court in the exercise of sound judicial discretion shall make such other requirements as will reasonably compensate and adequately protect the mortgagee during the period of delay.

Relating to the applicability of this law to all real estate the court said:

> "It should be mentioned, however, that though the emergency which justifies a portion of the act is more apparent in the case of homesteads than other property, the application of the act is not and need not be strictly confined to homesteads."

In the case of *State* v. *Circuit Court*, ... S. D. ...., 249 N. W. 631, decided July 7, 1933, the Supreme Court of South

Dakota sustained the validity of a law passed in 1933 under which a proceeding to foreclose a mortgage by advertisement might, at the option of the mortgagor, be changed to a proceeding to foreclose by action. In this case the court held that a clause in a mortgage authorizing the mortgagee to foreclose the mortgage by action or advertisement, as by statute in such case made and provided, related to the remedy in force at the time of the foreclosure, but said:

> "We * * * think it doubtful even had the parties not contracted with reference to the manner of the execution of the power of sale, that any substantial right of the mortgagee has been interfered with by this act of 1933. So long as there remains sufficient remedy on the contract which secures all the substantial rights of the parties, an act of the Legislature changing the remedy does not impair the obligation of the contract."

Recent Emergency Legislation Held Unconstitutional

In the case of *State ex rel. Cleveringa* v. *Klein*, ... N. D. .... 249 N. W. 118, decided on June 12, 1933, the Supreme Court of the State of North Dakota held a mortgage moratorium statute passed by the legislature of North Dakota to be unconstitutional. By the terms of this law the period within which a mortgagor or judgment debtor might redeem from a foreclosure or execution sale of real estate made after the passage and approval of the act, was extended from one year to two years from the date of sale, and the period within which a mortgagor or judgment debtor might redeem from a mortgage foreclosure or execution sale of real estate but for which deed had not been issued, was extended for a period of two years from the date of the passage and approval of the act.

The act declared that the law was an emergency measure, contained a statement of conditions which constituted an

emergency, and provided that it should be in force and effect only for two years from and after its passage and approval.

It will be noted that this North Dakota law is similar in its terms to that part of the Oklahoma moratorium law which was declared unconstitutional in that it arbitrarily extended the time of redemption and made no provision for the compensation of mortgagees or for the protection of their rights.

This North Dakota decision is referred to in the decision of the Minnesota Supreme Court in the case at bar, and also in the decision of the Oklahoma Supreme Court which is above referred to.

When Emergency Legislation Ceases to be Operative

The fears expressed in appellant's brief that the next legislature or succeeding legislatures will extend and continue to extend the time for operation of the mortgage moratorium act are groundless. The minute the emergency ceases to exist then the legislature has no power to extend the time for operation of the act or provide for additional similar emergency legislation. In fact, should the emergency cease to exist before the expiration of the time of operation provided for in the act, the act would immediately become void and inoperative. The validity of this mortgage moratorium act at all times depends wholly upon the continued existence of the emergency.

The Supreme Court of the United States in the case of *Chastleton Corporation* v. *Sinclair* (1924), 264 U. S. 543, after the emergency had passed, for which a remedy was provided by the measure construed in *Block* v. *Hirsh*, above referred to, again made clear that such an act should be upheld only as an emergency measure. For this reason, the court refused to sustain the validity of the law as extended,

because the emergency no longer existed, declaring that a law depending upon the existence of an emergency, or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change even though valid when passed. (P. 547).

Power of Legislature to Determine Existence of Emergency

The police power of the state is vested in the legislature. It is the legislature's duty and responsibility to determine when the emergency exists and how it will be met. When they have made this determination and passed a law to cope with the emergency, the courts should not set aside that law unless it has no real or substantial relation to the emergency. The following authorities are applicable:

The Supreme Court of the United States in the case of *Mugler* v. *Kansas* (1887), 123 U. S. 623, in upholding the constitutionality of the prohibition law of Kansas declared that:

> "If * * * a state deems the absolute prohibition of the manufacture and sale, within her limits, of intoxicating liquors for other than medical, scientific, and manufacturing purposes, to be necessary to the peace and security of society, the courts cannot, without usurping legislative functions, override the will of the people as thus expressed by their chosen representatives. They have nothing to do with the mere policy of legislation. * * * Indeed, it is a fundamental principle in our institutions, indispensable to the preservation of public liberty, that one of the separate departments of government shall not usurp powers committed by the Constitution to another department. * * * It is not for the courts, upon their views as to what is best and safest for the community, to disregard the legislative determination of that question." (P. 662.)

In the case of *Atkin* v. *Kansas* (1903) 191 U. S. 207 at page 223, the court said:

> "We are reminded by counsel that it is the solemn duty of the courts in cases before them to guard the constitutional rights of the citizen against merely arbitrary power. That is unquestionably true. But it is equally true—indeed, the public interests imperatively demand—that legislative enactments should be recognized and enforced by the courts as embodying the will of the people, unless they are plainly and palpably, beyond all question, in violation of the fundamental law of the Constitution."

In the case of *Jacobson* v. *Massachusetts* (1905), 197 U. S. 11, 31, the Supreme Court of the United States declared:

> "If there is any such power in the judiciary to review legislative action in respect of a matter affecting the general welfare, it can only be when that which the legislature has done comes within the rule that if a statute purporting to have been enacted to protect the public health, the public morals or the public safety, has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution."

In the case of *People* v. *LaFetra*, 230 N. Y. 429, 440, 130 N. E. 601, in determining whether the legislature of New York had the power to enact the housing legislation hereinbefore referred to, the court said:

> "Whether or not a public emergency existed was a question of fact, debated and debatable, which addressed itself primarily to the Legislature. That it existed, promised not to be presently self-curative, and called for action, appeared from public documents and

> from common knowledge and observation. If the law-making power on such evidence has determined the existence of the emergency and has, in the main, dealt with it in a manner permitted by the constitutional limitations upon legislative power, so far as the same affect the class of landlords now challenging the statutes, the legislation should be upheld. How it may operate on other classes or individuals not before the court is not our present concern."

In the case of *Guttag* v. *Shatzkin*, supra, the New York of Appeals, commenting upon the power of the New York legislature to pass the housing acts which are hereinbefore referred to, said:

> "The only question here is one of fact, not one of law; Do the facts call into existence the power reserved to the states to legislate for the safety and health of the people. Within its sphere the police power of the states is not unlike the war power of the nation. Both are rules of necessity, impliedly or expressly existing in every form of government; the one to preserve the health and morals of a community; the other to preserve sovereignty."

The legislature of the State of Minnesota without a single dissenting vote found that an emergency existed which called for the passage of the Mortgage Moratorium Act. The fact that the members of that great legislative body, entertaining widely different economic and political views, and coming from every walk of life and from every part of the state of Minnesota, all arrived at the same conclusion and joined in declaring that an emergency existed in the state, and that it was necessary to invoke the police power to cope with that emergency, is convincing evidence of the seriousness of the emergency, the necessity for the passage of the law, and of the fairness and reasonableness of the measure enacted.

Practical Construction Recently Placed on Emergency Powers

To show the practical construction that legislative bodies and executives have been placing upon their powers to act in emergencies which have recently arisen out of the depression, we call attention of the court to the recent mortgage foreclosure moratorium laws passed by the legislature of the states of Iowa, Wisconsin, North Dakota and Oklahoma; to the executive orders of the Governors of Minnesota and North Dakota, imposing moratoriums on mortgage foreclosures; to recent executive orders and legislative acts closing all the banks in practically every state in the Union; and finally to the proclamation by the President closing every bank in the United States. We also call the court's attention to the moratoriums on insurance loans imposed by legislative enactments, and by order of insurance commissioners, moratoriums which affected practically every insurance company in the United States.

We also call attention to the acts of Congress declaring invalid all provisions in contracts in so far as payment is required to be made in gold, and to the National Industrial Recovery Act by which Congress virtually placed commerce and industry under the supervision and control of the United States Government. These moratoriums and other similar measures all interfered with contract rights. In practically every case the interference with contract rights was considerably more sweeping and far-reaching than is the interference with contract rights under the provisions of the Minnesota Mortgage Moratorium Law.

Powers of Courts of Equity to Cope With Emergency Conditions

Courts of equity have always possessed jurisdiction to relieve against penalties and forfeitures which necessarily

abridged the contractual and property rights of one of the parties under the strict wording of their contract.

In the present economic crisis the courts have not hesitated to extend and use equitable powers to cope with emergency situations. By means of these equitable powers in many instances they have interfered with contract rights when it was necessary to take such action in the interests of public safety and the general welfare of the people.

In the outstanding case of *Suring State Bank* v. *Giese,* 246, N. W. 556 (Feb. 6, 1933), although there was no statute in Wisconsin which authorized the court to refuse to confirm a foreclosure sale at an entirely inadequate price, yet invoking its equitable powers, the court rose to the occasion and did refuse to confirm the sale, declaring:

> "The court takes judicial notice of the fact that the present economic depression has not merely resulted in a serious dislocation of the value of real estate, but also in the almost complete absence of a market for real estate. As a consequence there is no cash bidding at sales upon foreclosure. In normal times competitive bidding is the circumstance that furnishes reasonable protection to the mortgagor, and avoids the sacrifice of the property at a grossly inadequate sale price. In the present situation the device of a judicial sale largely fails of its intended purpose because of the lack of competitive bidding, and the question arises whether a court of equity is wholly impotent to rise to the needs of justice and see that the parties are fairly and properly protected. This is not a situation in which ordinary logic with respect to values has much vitality. In theory, a thing that cannot be sold has no value, and so with a parcel of real estate that is offered for sale at foreclosure. It may be argued that it is worth what purchasers will pay for it, and no more, and that if the only price offered constitutes but a negligible part of its theretofore assumed value, it nevertheless represents the value of the real estate

at that time. Such a conclusion is shocking to the conscience of the court, or, as the old equity courts said, to the conscience of the chancellor, and to all notions of justice as applied to this situation. Certainly the land has value so long as it or the buildings upon it may be used, and certainly in the case of farm lands, which constitute the homes of farmers, the premises have value in the sense of usefulness, however difficult it may be to translate this value into terms of dollars. Furthermore, this real estate, which is suffering from the consequences of a period of readjustment through which we are passing has potential or future value which may legitimately be taken into account. Its value in terms of dollars has been affected by a general condition. No one piece of land has depreciated in value; it has all depreciated. It has all suffered from the lack of demand on the part of the buyers. Under these circumstances it is within the power of a court of equity, without the aid of statute, to take one or all of three steps for the protection of the parties and the promotion of a fair solution of the difficulties. What is said here is said in the light of the present emergency, and because of the present inadequacy of a judicial sale to establish a fair value for the security." (P. 557.)

In the case of *First Union Trust Savings Bank* v. *Division State Bank,* et al., decided by Judge Harry M. Fisher of the Cook County Circuit Court on April 1, 1933, the judge in the language of the "American Bar Association Journal" (May, 1933):

"After carefully reviewing the ruinous course of foreclosures and after taking judicial notice of the seriousness of the emergency, reached a result that, as far as the writer knows, is by all odds the most significant and far-reaching in beneficent effect yet reached by any court. He held (1) that no receiver be appointed; (2) that the mortgagor be allowed to remain

in possession of the property subject to the same duties as a receiver and subject also to the same penalties for contempt; (3) that the complaint should not proceed with the foreclosure until the further order of the court, but that jurisdiction of the case should be retained and the complainant be given the right to proceed with foreclosure upon a showing that economic conditions have so changed as to justify such a course."

Further commenting upon the decision, the "American Bar Association Journal" says that the decision preserves the interest of both the mortgagor and the mortgagee.

In the very recent case of *Harry Kresner, Inc.* v. *Fuchs,* (Mar. 1933), 262 N. Y. S. 669, the court held that—

> "As respects the claimed right to accelerate the maturity of whole principal on default in interest of which mortgagee tendered payment, that in times of financial depression courts do not favor oppressive acts on the part of mortgagees though claimed to be founded on legal rights."

In the case of *New Jersey National Bank & Trust Company* v. *Lincoln Mortgage Tile & Guaranty Company,* 105 N. J. Eq. 557, decided in 1930, the court directed the trustee of a mortgage not to declare default and bring foreclosure in view of the emergency.

POINT C

The Minnesota Mortgage Moratorium Law does not violate the equal protection clause contained in the Fourteenth Amendment to the Constitution of the United States.

It is claimed by the appellant that the act discriminates against creditors holding real estate security and against

debtors whose indebtedness is not secured by mortgages on real estate; that it discriminates against those who hold mortgages executed prior to the passage of the act to which the act by its term is applicable, and in favor of persons whose mortgage was executed subsequent to the passage of the act, to which the act by its terms is not applicable, and that the act grants special privileges to the state and to the United States in that it provides that its provisions shall not apply to mortgages held by the United States as security or pledge, and to mortgages held as security or pledge to secure the payment of a public debt or to secure the payment of public funds. With respect to the complaint that the act exempts mortgages held by the state and United States as aforesaid, it seems to us that it was not necessary to make the specific exemption in the statute inasmuch as the mortgagors in such mortgages could not in any event have availed themselves of the remedies provided for in the act as against the state or the United States as the commencement of proceedings to avail themselves of the remedies afforded would amount to bringing suit.

The claim of appellant appears to be that because of these alleged discriminations the act violates the equal protection clause of the constitution of the United States. It is our contention that this act does not make any unjust discriminations which would result in a violation of the said equal protection clause. Under the rules laid down by the United States Supreme Court the power of the state to classify for the purposes of legislation are very broad.

This question was before the Supreme Court of the United States in *Magoun* v. *Illinois Trust & Savings Bank* (1898), 170 United States 283. That case arose from a law of the State of Illinois imposing a graduated tax upon gifts and inheritances, graduated according to amount and according to the relationship of the beneficiary to the testator or intes-

tate. The court found this classification permissible. The limitations imposed by the Fourteenth Amendment were expounded by the court as follows:

> "Is the act open to this criticism? The clause of the Fourteenth Amendment especially invoked is that which prohibits a State denying to any citizen the equal protection of the laws. What satisfies this equality has not been and probably never can be precisely defined. Generally it has been said that it 'only requires the same means and methods to be applied impartially to all the constituents of a class so that the law shall operate equally and uniformly upon all persons in similar circumstances.' *Kentucky Railroad Tax Cases,* 115 U. S. 321, 337. It does not prohibit legislation which is limited, either in the objects to which it is directed or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike under like circumstances and conditions, both in the privilege conferred and the liabilities imposed. *Hayes* v. *Missouri,* 120 U. S. 68.
>
> "But what is the test of likeness and unlikeness of circumstances and conditions? These expressions have almost the generality of the principle they are used to expound, and yet they are definite steps to precision and usefulness of definition, when connected with the facts of the cases in which they are employed. With these for illustration it may be safely said that the rule prescribes no rigid equality and permits to the discretion and wisdom of the State a wide latitude as far as interference by this court is concerned. Nor with the impolicy of a law has it concern. Mr. Justice Field said in *Mobile County* v. *Kimball,* 102 U. S. 691, that this Court is not a harbor in which can be found a refuge from ill-advised, unequal and oppressive state legislation. And he observed in another case: 'It is hardly necessary to say that hardship, impolicy or injustice of state laws is not neces-

sarily an objection to their constitutional validity!" (P. 293.)

In *Quong Wing* v. *Kirkendall* (1912), 223 U. S. 59, the question before the court was the discrimination in a state law in the matter of taxation, against the hand laundry and in favor of the steam laundry, and also a discrimination against men and in favor of women. The court held the act constitutional. It said:

> "A State does not deny the equal protection of the laws merely by adjusting its revenue laws and taxing system in such a way as to favor certain industries or forms of industry. Like the United States, although with more restriction and in less degree, a State may carry out a policy, even a policy with which we might disagree. *McLean* v. *Arkansas,* 211 U. S. 539, 547. *Armour Packing Co.* v. *Lacy,* 200 U. S. 226, 235. *Connolly* v. *Union Sewer Pipe Co.,* 184 U. S. 540, 562. It may make discriminations, if founded on distinctions that we cannot pronounce unreasonable and purely arbitrary, as was illustrated in *American Sugar Refining Co.* v. *Louisiana,* 179 U. S. 89, 92, 95; *Williams* v. *Fears,* 179 U. S. 270, 276; *W. W. Cargill Co.* v. *Minnesota,* 180 U. S. 452, 469. It may favor or discourage the liquor traffic, or trusts. The criminal law is a whole body of policy on which States may and do differ. If the State sees fit to encourage steam laundries and discourage hand laundries that is its own affair. And if again it finds a ground of distinction in sex, that is not without precedent. It has been recognized with regard to hours of work. *Muller* v. *Oregon,* 208 U. S. 412. It is recognized in the respective rights of husband and wife in land during life, in the inheritance after the death of the spouse. Often it is expressed in the time fixed for coming of age. If Montana deems it advisable to put a lighter burden upon women than upon men with regard to an employment that our people commonly regard as more appropriate

for the former, the Fourteenth Amendment does not interfere by creating a fictitious equality where there is a real differencee. The particular points at which that difference shall be emphasized by legislation are largely in the power of the State." (P. 62.)

The Supreme Court again considered this question in *Missouri, Kansas and Texas Railway Company* v. *May* (1904), 194 U. S. 267. A legislative act of the State of Texas required all railway companies to keep their right of way clear of noxious weeds but imposed no corresponding mandate on other owners of land. The court considered the question whether the act was in violation of the Fourteenth Amendment. It announced its opinion in these words:

"It is admitted that Johnson grass is a menace to crops, that it is propagated only by seed, and that a general regulation of it for the protection of farming would be valid. It is admitted also that legislation may be directed against a class when any fair ground for the discrimination exists. But it is said that this particular subjection of railroad companies to a liability not imposed on other owners of land on which Johnson grass may grow, is so arbitrary as to amount to a denial of the equal protection of the laws. There is no dispute about general principles. The question is whether this case lies on one side or the other of a line which has to be worked out between cases differing only in degree. With regard to the manner in which such a question should be approached, it is obvious that the legislature is the only judge of the policy of a proposed discrimination. The principle is similar to that which is established with regard to a decision of Congress that certain means are necessary and proper to carry out one of its express powers. *McCulloch* v. *Maryland*, 4 Wheat. 316. When a state legislature has declared that in its opinion policy requires a certain measure, its actions should not be disturbed by the courts under the Fourteenth Amendment,

unless they can see clearly that there is no fair reason for the law that would not require with equal force its extension to others whom it leaves untouched.

Approaching the question in this way we feel unable to say that the law before us may not have been justified by local conditions." (P. 269.)

In the case of *Patsone* v. *Commonwealth of Pennsylvania* (1914), 232 U. S. 138, the facts were as follows: Defendant was an unnaturalized foreign born resident of Pennsylvania and was charged with having in his possession a shotgun in violation of a state law. This law made it unlawful for such a person to kill any wild bird or other animal except in defense of person or property and likewise unlawful for him to own or be possessed of a shotgun. Defendent was convicted. On successive appeals, the matter reached the Supreme Court. In upholding the validity of the Pennsylvania law the Supreme Court remarked:

"But we start with the general consideration that a State may classify with reference to the evil to be presented, and that if the class discriminated against is or reasonably might be considered to define those from whom the evil mainly is to be feared, it properly may be picked out. A lack of abstract symmetry does not matter. The question is a practical one dependent upon experience. The demand for symmetry ignores the specific difference that experience is supposed to have shown to mark the class. It is not enough to invalidate the law that others may do the same thing and go unpunished, if, as a matter of fact, it is found that the danger is characteristic of the class named. *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 80, 81. The State 'may direct its law against what it deems the evil as it actually exists without covering the whole field of possible abuses.' *Central Lumber Co.* v. *South Dakota*, 226 U. S. 157, 160. *Rosenthal* v. *New York*,

226 U. S. 260, 270. *L'Hote* v. *New Orleans,* 177 U. S. 587. See further *Louisville & Nashville R. R. Co.* v. *Melton,* 218 U. S. 36. The question therefore narrows itself to whether this court can say that the Legislature of Pennsylvania was not warranted in assuming as its premise for the law that resident unnaturalized aliens were the peculiar source of the evil that it desired to prevent. *Barrett* v. *Indiana,* 229 U. S. 26, 29." (P. 144.)

In the case of *Miller* v. *Wilson* (1915), 236 U. S. 373, at page 384, the court said:

"It (the legislature) is free to recognize degrees of harm, and it may confine its restrictions to those classes of cases where the need is deemed to be clearest. As has been said, it may 'proceed cautiously, step by step,' and 'if an evil is specially experienced in a particular branch of business' it is not necessary that the prohibition 'should be couched in all-embracing terms.' *Carrol* v. *Greenwich Ins. Co.,* 199 U. S. 401, 411. If the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied."

In the case of *Marcus Brown Holding Co.* v. *Feldman* (1921) supra, answering the contention that the New York so-called "housing acts" violated the equal protection law of the Fourteenth Amendment of the Constitution of the United States, the court said:

"It is said too that the laws are discriminating, in respect of the cities affected and the character of the buildings, the laws not extending to buildings occupied for business purposes, hotel property or buildings now in course of erection, etc. But as the evil to be met was a very pressing want of shelter in certain crowded centers the classification was too obviously justified to need explanation, beyond repeating what was said

below as to new buildings, that the unknown cost of completing them and the need to encourage such structures sufficiently explain the last item on the excepted list." (P. 198.)

We believe that an examination of these cases will impress upon this court the correctness of the following summary statement of the views of the Supreme Court of the United States with reference to the use of classification on state legislation. If an act is intended to subserve some purpose of public policy; if the classification adopted to attain that purpose is reasonable and not purely arbitrary; if the act applies impartially to all the individuals within the same class, this court will sustain it. Moreover, this court will not inquire into the wisdom of the classification or hold the act invalid because it may be possible to point out other groups of individuals who might have been included within its classification, and were not so included.

POINT D

The provisions of the Minnesota Mortgage Moratorium Law are severable, and for that reason the court is not called upon to determine the constitutionality of those parts of that law which have no bearing on the case at bar, and moot questions arising out of provisions of that law which have no bearing on the case at bar are not properly before the court.

While we believe that the act involved in this case is constitutional in all respects, it is our contention that questions concerning the constitutionality of other parts of this act which have no bearing upon the relief granted should not be considered because the provisions of the act are severable. It appears from a reading of the whole act that the relief asked for and received by the appellees is the

principal relief provided for by the act and that the provisions of the act relating to the granting of this relief can be easily separated from the rest of the act, and in themselves constitute a complete statute. That the legislature did not intend that the act should be considered as a whole in determining its constitutionality, but intended that its parts should be severable, is apparent from Section 9 of Part 1 of said Chapter 339, which reads as follows:

> "Sec. 9. The provisions of this Act are hereby declared to be severable. If one provision hereof shall be found by the decision of a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the other provisions of this Act."

Relating to the power of the court to sustain provisions of the act as constitutional even though a part thereof is unconstitutional, the following rule is laid down in Black on Constitutional Law (4th Ed.) on page 75:

> "The rule is that if the invalid portions can be separated from the rest, and if, after their excision, there remains a complete, intelligible, and valid statute, capable of being executed, and conforming to the general purpose and intent of the legislature, as shown in the act, it will not be adjudged unconstitutional in toto but sustained to that extent."

In *Hill* v. *Wallace* (1922), 259 U. S. 44, 71; in commenting upon a provision similar to the provision contained in Section 9 of the Mortgage Moratorium Act, which is quoted above, the court said:

> "Undoubtedly such a provision furnishes assurance to courts that they may properly sustain separate sections or provisions of a partly invalid act without hesitation or doubt as to whether they would have been

adopted, even if the legislature had been advised of the invalidity of part."

In Dorchy v. Kansas (1924), 264 U. S. 286, 290, 291, the court construing a provision similar to the provision contained in Section 9, which is hereinbefore quoted, said that such a provision provides a rule of construction which may sometimes aid in determining the legislative intent, but that it is an aid merely not an inexorable demand and that in cases coming from the state courts, the United States Supreme Court, in the absence of a controlling state decision, may, in passing upon the claim under the federal law, decide, also, the question of severability.

The appellant's brief raises and discusses a number of questions which are in no way related to the provisions of the act under which the appellees secured relief, hence it is our contention that these questions are moot in so far as this case is concerned. Chief among these moot questions which are discussed in appellant's brief are the following: the right to have a proceeding to foreclose a mortgage by advertisement changed to a proceeding to foreclose by action; the arbitrary extension of the period of redemption from a mortgage foreclosure sale for a period of thirty days after the passage aand approval of the act; the prohibition of the bringing of suits for deficiency judgments until after the expiration of the time for redemption; the extension of the time allowed by law for redemption from execution sales upon judgments recovered on notes secured by mortgages; and, the extension of the time allowed by law from execution sales and sales in proceedings where mortgages are foreclosed by action.

The only questions before the court in this case are the questions which arise out of that part of the act under which the appellees secured the extension of the time of re-

demption. No other parts of the law affect the rights of the appellant.

POINT E

The Minnesota Mortgage Moratorium Law is just, fair and reasonable and benefits both the mortgagor and the mortgagee, and does no more than vest in the courts equitable powers to cope with emergency conditions.

Until the passage of the Minnesota Mortgage Moratorium Law, the courts of the state of Minnesota were practically powerless to give equitable relief to the owners of mortgaged premises because nearly all of the mortgages were foreclosed by advertisement. By the provisions of this act the courts have been given the power to render equitable relief to mortgagors where foreclosures are had by advertisement as well as where they are had by action. There is no provision in the act which gives the owner of the mortgaged premises any absolute rights, but all the remedies which the owner can get under this act he can secure only with the approval of the court. The court in every instance where relief is asked for is empowered by the terms of the act to deny the relief in cases where it would be inequitable to grant it. This act in effect does nothing more than give to the court in Minnesota equitable powers in foreclosure proceedings analogous to the powers which courts of other states during the present depression have found it necessary to assume without direct legal sanction. Thus the legislature by passing this law, for a limited period, has invoked the police power to assist the court in extending their equitable jurisdiction to all mortgage foreclosures.

As an emergency measure the Mortgage Moratorium Act

is an extremely conservative law. It aims to protect the mortgagee as well as the mortgagor. It does not wipe out the mortgagee's security or impair that security. It merely gives the court the power, in cases where it is equitable, to postpone for a limited time, the mortgagee's right to realize on his security by requiring reasonable payments to be made. In fact, in most cases where relief is granted the mortgagee wil be better off than if he took over the property himself. During the period of economic depression he would be unable to sell the property for the amount of his mortgage or rent it for an amount sufficient to pay the mortgage interest, the taxes and upkeep of the property, and in many instances he would be unable to collect the rent agreed upon. Certainly the appellant in this case cannot complain of the treatment which he has received by the court. He has been awarded the full rental value of the property during the entire extended period of redemption.

Under this law, if conditions change during the extended period of redemption, the court is authorized on the application of either party to revise and alter the terms of the extension in such manner as the changed conditions and circumstances may require. By this provision the court may not only alter the amount to be paid by the mortgagor, but may shorten the time for redemption if conditions warrant it. Under the terms of this law, if the owner fails to make the payments as fixed by the court, or commits waste on the premises his right of redemption ceases in thirty days.

The law has been in operation for approximately six months, and has proven itself to be both beneficial and practical. Thousands of mortgagors have availed themselves of this law by applying to the court for extensions of the time of redemption, and have thus been enabled to retain the ownership of their homes and other real estate which they

would otherwise have lost irrevocably. The courts of this state have applied the law in a just, fair and equitable manner to the general satisfaction of both mortgagees and mortgagors and the public. Because of the existence of this law thousands of settlements and compromises between mortgagees and mortgagors have been effected without court proceedings. It is our firm conviction that this act has done more than any other law passed by the 1933 legislature of the state of Minnesota to relieve the distressed economic conditions existing among our people.

IV.

Conclusion

In conclusion and to summarize this argument, we contend:

1. That at the time of the passing of the Mortgage Moratorium Law the State of Minnesota was experiencing extraordinary economic distress justifying a reasonable exercise by the state legislature of its police power in the interest of the public health, public safety, public morals and the general welfare.

2. That the state legislature possessed the power to choose the means for relieving that emergency providing those means were reasonable.

3. That the Mortgage Moratorium Law went no further in the exercise of this power than was necessary in so serious an emergency, and was accordingly a reasonable exercise of the state's police power.

4. That the act does little more than give to the courts of Minnesota equitable powers over mortgage foreclosures such as have been exercised by the courts of some other states without specific legislative authority.

5. That the act embodies all of the limitations on legislative action in emergencies of a similar character as set forth by this Court in its decisions, namely:

(a) Its remedies are appropriate to the distress sought to be relieved.

(b) The relief given by the act is limited in point of time to the probable period of distress.

(c) The relief given by the act is restricted in such a manner as to give fair consideration to both parties to the mortgage contract.

(d) The act leaves it to the courts to decide as to what is fair and reasonable between mortgagor and mortgagee. It is left to the courts to determine whether there shall be an extension of time in which to redeem, the length of time of such extension and the terms on which it shall be given.

6. That this act should accordingly be held consitutional for substantially the same reasons as the housing legislation of New York and the District of Columbia was held constitutional by this Court.

For the reasons which are hereinbefore set forth and under the authorities and legal principles which have been discussed in this brief, we respectfully submit that the

constitutionality of the Minnesota Mortgage Moratorium Law should be upheld and the judgment of the Supreme Court of the State of Minnesota should be affirmed.

Respectfully submitted,

GEORGE T. SIMPSON,
Counsel for Appellees,
730 *Security Building,*
Minneapolis, Minnesota.

HARRY H. PETERSON,
Attorney General of Minnesota;

WILLIAM S. ERVIN,
Assistant Attorney General of Minnesota;

MATTHIAS N. ORFIELD,
Assistant Attorney General of Minnesota;
State Capitol,
St. Paul, Minnesota;

GEORGE C. STILES,
404 *Hodgson Building,*
Minneapolis, Minnesota;
Of Counsel.

INDEX.

	Page
Preliminary Statement	1
Summary of Argument	3
I. The statute, because of the degree to which and the manner in which it subserves the general welfare in a time of emergency, springs from a constitutional exercise of the police power	3
II. Certain matters which the courts judicially notice, certain presumptions with which they surround legislation, and the general attitude which judicial tribunals take toward legislation, all tend to support the act	10
III. The statute is not repugnant to the contract clause of Section 10 of Article I of the Constitution of the United States	16
IV. The statute is not repugnant to the due process clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States	18
V. The statute is not repugnant to the equal protection clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States	21
Argument	24

TABLE OF TEXTS AND DIGESTS.

Burdick, The Law of the American Constitution, Section 196.....10, 41, 50
Burdick, The Law of the American Constitution, Section 197.....10, 41, 50
Cooley, Constitutional Limitations (8th ed.), Vol. 2, p. 1231.....22, 103
Cooley, Constitutional Limitations (8th ed.), Vol. 2, p. 1232.....7, 41
Cooley, Constitutional Limitations (8th ed.), Vol. 2, p. 1234.....8, 41
Cooley, Constitutional Limitations (8th ed.), Vol. 2, p. 1237..16, 17, 76, 77
Corpus Juris, Vol. 12, Const. L., Section 221.....16, 58, 74
Corpus Juris, Vol. 12, Const. L., Section 222.....14, 59, 66
Corpus Juris, Vol. 12, Const. L., Section 224.....61
Corpus Juris, Vol. 12, Const. L., Section 225.....14, 66
Corpus Juris, Vol. 12, Const. L., Section 226.....58
Corpus Juris, Vol. 12, Const. L., Section 415.....6, 35, 39
Corpus Juris, Vol. 12, Const. L., Section 430.....5, 34
Corpus Juris, Vol. 12, Const. L., Section 603.....77, 79
Corpus Juris, Vol. 12, Const. L., Section 417.....7, 41
Corpus Juris, Vol. 12, Const. L., Section 894.....21, 96
Corpus Juris, Vol. 12, Const. L., Section 962.....19, 89, 91
Corpus Juris, Vol. 23, Evid., Section 1810.....10, 54
Corpus Juris, Vol. 23, Evid., Section 1900.....11, 55
Corpus Juris, Vol. 23, Evid., Section 1934.....11, 57
Corpus Juris, Vol. 23, Evid., Section 1947.....11, 56
Dec. Dig., (Third), Const. L., Section 48.....11, 16, 58, 59, 74, 98
Dec. Dig., (Third), Const. L., Section 70 (3).....15, 61, 62, 70
Dec. Dig., (Third), Const. L., Section 212.....21, 95
Dec. Dig., (Third), Const. L., Section 253.....19, 89
New Standard Dictionary, p.1018.....4, 26
Ruling Case Law, Vol. 6, Const. L., Section 183.....5, 34
Ruling Case Law, Vol. 6, Const. L., Section 184.....6, 35
Ruling Case Law, Vol. 6, Const. L., Section 185.....7
Ruling Case Law, Vol. 6, Const L., Section 188.....8, 44
Warren, The Supreme Court in United States History, Vol. 2, p. 735.....10, 50, 51
Words & Phrases, Vol. 3, p. 2227.....94
Words & Phrases, Vol. 3, p. 2232.....94
Words & Phrases, Vol. 3, p. 2243.....94
Words & Phrases, Vol. 3, p. 2253.....19
Words & Phrases (2d ser.), Vol. 2, p. 167.....94
Words & Phrases (2d ser.), Vol. 2, p. 170.....94
Words & Phrases (2d ser.), Vol. 2, p. 175.....94
Words & Phrases (3d ser.), Vol. 3, p. 63.....94
Words & Phrases (3d ser.), Vol. 3, p. 67.....94
Words & Phrases (4th ser.), Vol. 1, p. 813.....94
Words & Phrases (4th ser.), Vol. 1, p. 815.....94

TABLE OF STATUTES.

Agricultural Adjustment Act; Preamble to Tit. I.....11
Emergency Rd. Transportation Act, 1933 Sections 1 and 2.....11, 57
Federal Emergency Relief Act of 1933; initial part of act.....11, 56
Federal Emergency Relief Act of 1933, Section 4 (a).....11, 56
National Industrial Recovery Act, of June 16, 1933, Section 1.....11, 57

TABLE OF CASES.

Adams v. Milwaukee, 228 U. S. 572 103
Aetna Ins. Co. v. Commonwealth, 169 S. E. 859 ..... 12, 60
American Coal Mining Co. v. Special Coal & Food Commission, 268 Fed. 563 ..... 14, 65, 74
American Land Co. v. Zeiss, 219 U. S. 47 48
Appalachian Elec. Power Co. v. Smith, 4 Fed. Supp. 6 61
Arnold & Murdock Co. v. Industrial Commission, 314 Ill. 251 92
Atlantic Coast Line Rd. Co. v. Goldsboro, 232 U. S. 548 ..... 13, 17, 19, 20, 62, 78, 90, 91
Austin v. City of New York, 258 N. Y. 113 45
Aymette v. State, 2 Humph. (21 Tenn.) 154 ..... 8, 24
Bachtel v. Wilson, 204 U. S. 36 99
Bacon v. Walker, 204 U. S. 311 ..... 9, 48
Bankers' Trust Co. v. Russell (Mich.) 249 N. W. 27 ..... 8, 46
Barbier v. Connolly, 113 U. S. 27 ..... 9, 21, 48, 97
Barnitz v. Beverly, 163 U. S. 118 ..... 18, 85, 86
Barret v. Rickard, 76 Neb. 769 ..... 6, 39
Blanshard v. City of New York, 262 N. Y. 5 61
Block v. Hirsch, 256 U. S. 135 ..... 8, 10, 11, 13, 15, 18, 20, 43, 53, 55, 57, 62, 67, 71, 74, 83, 90, 91
Boston Beer Co. v. Massachusetts, 97 U. S. 25 ..... 7, 42, 71, 75, 78
Bottdorf v. Lewis, 121 Iowa 27 ..... 20, 93
Bowditch v. Boston, 101 U. S. 16 48
Boyd v. Alabama, 94 U. S. 645 71
Bradley v. Lightcap, 195 U. S. 1 84
Bremen Mining, etc., Co. v. Bremen, 13 N. Mex. 111 85
Brine v. Ins. Co., 96 U. S. 627 86
Brinton v. Seevers, 12 Iowa 389 92
Bronson v. Kinzie, 42 U. S. 311 ..... 18, 86
Brooklyn Church Society v. Brooklyn Free Kindergarten Society, 152 N. Y. Supp. 41 ..... 4, 26
Brown v. Maryland, 12 Wheat., 419 ..... 7, 10, 41, 50, 51
Brushaber v. Union Pac. Rd. Co., 240 U. S. 1 62
Burton v. Emerson, Shields & Co. (Iowa), 4 G. Gr. 393 84
Butchers' Union Co. v. Crescent City Co., 111 U. S. 746 ..... 71, 75
Cargill v. Power, 1 Mich. 369 85
Caro v. Wollenberg, 68 Ore. 420 ..... 21, 95
Cawker v. Meyer, 147 Wis. 320 ..... 4, 25
Central Lumber Co. v. South Dakota, 226 U. S. 157 102
Chadwick v. Moore (Pa.), 8 Watts & Sergeant 49 ..... 18, 83
Chamberlain v. City of Burlington, 19 Iowa 395 ..... 4, 25
Chapman v. Boynton, 4 Fed. Supp. 43 ..... 19, 89
Charles River Bridge v. Warren Bridge, 11 Pet. 420 71
Chas. Wolff Packing Co. v. Court of Industrial Relations, 262 U. S. 522 67
Chassanoil v. City of Greenwood (Miss.), 114 So. 781 ..... 12, 60
Chastleton Corp. v. Sinclair, 264 U. S. 543 ..... 10, 11, 14, 16, 55, 57, 68, 72, 73
Chicago & Alton Rd. Co. v. Tranbargar, 238 U. S. 67 78
Chicago, Burlington & Quincy Rd. v. Chicago, 166 U. S. 226 92
Chicago, Burlington & Quincy Rd. v. Drainage Commissioners, 200 U. S. 561 ..... 4, 6, 8, 9, 15, 19, 26, 35, 47, 70, 91
Chicago, Burlington & Quincy Rd. v. McGuire, 219 U. S. 549 71
Chicago, Milwaukee & St. Paul Ry. Co. v. City of Milwaukee, 97 Wis. 422 ..... 10, 51
Citizens' Ins. Co. v. Hebert, 139 La. 708 ..... 6, 35
City of Aurora v. Burns (Ill.), 149 N. E. 784 ..... 8, 15, 44, 71
City of Butte v. Roberts (Mont.), 23 Pac. (2d) 342 ..... 17, 19, 77, 90
City of Chicago v. Washingtonian Home, 289 Ill. 206 ..... 6, 15, 36, 69

City of Coral Gables v. Certain Lands (Fla.), 149 So. 36.....94
City of Des Moines v. Manhattan Oil Co., 193 Iowa 1096.....4, 9, 48
City of New Orleans v. LeBlanc, 139 La. 113.....22, 102
City of Rochester v. West, 51 N. Y. Supp. 482.....7, 10, 42, 52
City of Westport v. Mulhelland, 159 Mo. 86.....7, 10, 42, 51
Collins v. Collins, 79 Ky. 88.....85
Commonwealth v. Algers (Mass), 7 Cush. 53.....38
Commonwealth v. City of Newport News (Va., 1932), 164 S. E. 689.....30
Commonwealth v. Great American Indemnity Co. (Pa.), 167 Atl. 793.....12, 60
Conley v. Barton, 260 U. S. 677.....86
Connecticut Mutual Life Ins. Co. v. Cushman, 108 U. S. 51.....86
Cook County v. Chicago, 311 Ill. 324.....5, 34
Correll v. Hull (Iowa), 4 G. Gr. 455.....84
Cotter v. Stoeckel, 97 Conn. 244.....71
Crowley v. Christenson, 137 U. S. 86.....78
Crump v. Guyer, 60 Okla. 222.....92
Cusack Co. v. City of Chicago, 242 U. S. 526.....67
Daniels v. Teraney, 102 U. S. 415.....84
Des Moines v. Manhattan Oil Co., 193 Iowa 1096.....37
Douglas v. Kennedy, 168 U. S. 488.....75
Eckerson v. Des Moines, 137 Iowa 452.....11, 59
Edgar A. Levy Leasing Co. v. Siegel, 258 U. S. 242.....8, 17, 19, 20, 43, 77, 90, 92
Edwards v. Kearzey, 96 U. S. 595.....85
Edworthy v. Iowa Savings & Loan Assn., 114 Iowa 220.....20, 93
Euclid v. Ambler [illegible] 272 U. S. 365.....67
Farmer and Merchants Bank v. Federal Reserve Bank, 262 U. S. 649.....22, 102
Farmers Co-operative Creamery v. Iowa State Ins. Co., 112 Iowa 609.....84
Fisher Flouring Mills Co. v. Brown, 109 Wash. 680.....21, 97
Fletcher v. Peck, 6 Cranch 87.....67
Garrison v. City of New York, 21 Wall. 196.....80
Gault's Appeal, 33 Pa. 94.....21, 83, 84, 95
German Alliance Ins. Co. v. Lewis, 233 U. S. 389.....43
Gibbons v. Ogden, 9 Wheat. 1.....62
Gilman v. Philadelphia, 3. Wall. 713.....47
Gladney v. Sydnor, 172 Mo. 318.....92
Graham v. Kingwell (Cal.) 24 Pac. (2d) 488.....5, 19, 34, 89
Green v. Biddle, 8 Wheat. 1.....85
Gunn v. Berry, 15 Wall. 610.....85
Hadachek v. Los Angeles, 239 U. S. 394.....67
Hamilton v. Kentucky Distilleries & Warehouse Co., 251 U. S. 146.....13, 16, 20, 48, 62, 73, 92
Harmonson v. Wilson, Fed. Cas. No. 6074.....80
Henderson Bridge Co. v. Henderson City, 173 U. S. 592.....99
Hollister v. Donahoe, 11 S. Dak. 197.....87
Hooker v. Burr, 194 U. S. 415.....87
Howard v. Bugbee, 65 U. S. 461.....85
Hoyt Metal Co. v. Atwood, 289 Fed. 453.....92
Hubbell v. Herring (Iowa), 249 N. W. 430.....60
Hubbell v. Higgins, 148 Iowa 36.....19, 90
Hughes v. City of Detroit, 217 Mich. 567.....22, 102
Hunter v. Colfax Consol. Coal Co., 175 Iowa 245.....11, 59
Hutchens v. Jackson (N. Mex.), 23 Pac. (2d) 355.....14, 60
Jefferson County v. Busby (Ala.), 148 So. 411.....12, 13, 16, 60, 62, 74
Kirkendall v. Omaha, 39 Neb. 1.....3, 24
Koen v. State, 35 Neb. 676.....4, 26

Lamb v. Powder River Live Stock Co., 132 Fed. 434.....85
Lake Shore & Mich. South. Ry. v. Ohio, 173 U. S. 285.....47
Leonard v. State, 100 Ohio St. 456.....10, 51
Leonhart v. Board of Education (W. Va.) 170 S. E. 418
.....12, 13, 14, 15, 60,62, 66, 68
License Cases, 5 How. 504.....36
Lindsley v. National Carbonic Gas. Co., 220 U. S. 61
.....22, 23, 66, 99,102, 103
Little v. American State Bank (Mich.) 249 N. W. 22.....13, 22, 62, 99
Louisiana v. New Orleans, 109 U. S. 285.....80
Louisiana v. New Orleans, 102 U. S. 203.....86
Louisville & Nashville Rd. Co. v. Melton, 218 U. S. 86.....99
Louisville & Nashville Rd. Co. v. Mottley, 219 U. S. 462.....78
Malone v. Roy, 134 Cal. 344.....85
Maloney v. Fortune, 14 Iowa 417.....87
Manigault v. Springs, 199 U. S. 473.....15, 17, 72, 75, 76, 77, 78
Marcus Brown Holding Co. v. Feldman, 256 U. S. 170.....17, 19, 78, 90
Martin v. Blattner, 68 Iowa 286.....19, 90
Martin v. Hunter, 1 Wheat. 304.....8
Mason v. City of Seattle (Wash.), 24 Pac. (2d) 91.....12, 60
McCabe v. Atchison, etc., Ry. Co., 186 Fed. 966.....11, 58
McCracken v. Hayward, 43 U. S. 608.....86
McCullough v. Maryland, 4 Wheat. 316.....62
McGuire v. Chicago, Burlington & Quincy Rd. Co., 131 Iowa 340.....6, 39
McKeen v. New York, New Haven & Hartford Ry. Co., 75 Conn 347.....6, 36
McPherson v. Fisher (Ore.), 23 Pac. (2d) 913.....13, 16, 62, 74
Memphis v. U. S., 97 U. S. 293.....84
Miller v. Board of Public Works (1925), 195 Cal. 477
.....3, 5, 6, 8, 25, 34, 36, 44, 45
Miller v. City of Niagara Falls, 202 N. Y. Supp 594.....22, 102
Miller v. Wilson, 236 U. S. 373.....103
Mississippi State Tax Commission v. Flora Drug Co. (Miss),
148 So. 373.....13, 62
Missouri, Kansas & Texas Ry. Co. v. May, 194 U. S. 267.....13, 64
Morley v. Lake Shore Ry. Co., 146 U. S. 162.....80
Morrison v. State, 116 Tenn, 534.....9, 47
Mt. Vernon-Woodberry Cotton Duck Co. v. Alabama Interstate
Power Co., 240 U. S. 30.....43
Mugler v. Kansas, 123 U. S. 623.....19, 78, 91, 92
Munn v. Illinois, 94 U. S. 113.....10, 51, 52, 53, 78, 99
National Fire Ins. Co. v. Warburg, 260 U. S. 71.....13, 62
New Orleans Gas Co. v. Drainage Commissioners, 197 U. S. 453.....92
New Orleans Gas Co. v. Louisiana Light Co., 115 U. S. 650.....71, 72
New York, etc., Rd. Co. v. Bristol, 151 U. S. 556.....78
Noble State Bank v. Haskell, 219 U. S. 104
.....5, 6, 7, 8, 9, 33, 35, 39, 43, 48
Nolen v. Riechman, 225 Fed. 812.....11, 59
Norris v. Tripp, 111 Iowa 115.....92
Oshkosh Waterworks Co. v. Oshkosh, 187 U. S. 437.....84
Ozan Lumber Co. v. Union County Bank, 297 U. S. 251.....99
Packet Co. v. Keokuk, 95 U. S. 80.....5, 33
Pennsylvania Coal Co. v. Mahon, 260 U. S. 393.....7, 29, 41
Pennsylvania Hospital v. Philadelphia, 245 U. S. 20.....16, 76
People v. City Prison Warden, 139 N. Y. Supp. 277.....16, 74
People v. Coulides, 265 N. Y. Supp. 765.....5, 14, 34, 65
People v. La Fetra, 230 N. Y. 429.....8, 9, 14, 19, 45, 48,68, 89
People v. Nebbia, 262 N. Y. 259.....2, 8, 10, 12, 13, 45, 48, 53, 60, 62
Petley v. North Carolina, 249 U. S. [illegible].....90

Pettis v. Alpha Alpha Chapter, 115 Neb. 525 ..... 3,5, 6, 8, 25, 34, 39, 44, 47
Phinney v. Phinney, 81 Me. 480 86
Pinkum v. City of Eau Claire, 81 Wis. 301 92
Platt v. Craig, 60 Ohio St. 75 ..... 8, 28, 25, 103
Plymouth Coal Co. v. Pennsylvania, 232 U. S. 531 90
Pound v. Turck, 95 U. S. 459 47
Price v. Illinois, 238 U. S. 446 67
Producers Transportation Co. v. Rd. Comm. 251 U. S. 228 78
Puget Sound Pub. Co. v. Times Printing Co., 33 Wash. 551 ..... 4, 26
Purity Extract and Tonic Co. v. Lynch, 226 U. S. 192 ..... 20, 70, 93
Rast v. Van Deman & Lewis Co., 240 U. S. 342 ..... 62, 67
Raymond Lumber Co. v. Raymond Light, etc., Co., 92 Wash. 330 ..... 17, 79
Reeves v. Corning, 51 Fed. 774 42
Richmond Linen Supply Co. v. City of Lynchburg (Va.), 169 S. E. 554 ..... 11, 60
Rider v. Cooney (Mont.), 28 Pac. (2d) 261 ..... 12, 60
Rideout v. Knox, 148 Mass. 368 29
Robards v. Brown, 40 Ark. 423 85
Roche v. Waters, 72 Md. 284 92
Rodrie v. New York, 264 U. S. 292 67
Rosier v. Hale, 10 Iowa 476 87
Rott v. Steffen, 229 Mich. 241 ..... 84, 95
Seibert v. Lewis, 122 U. S. 284 86
Shaffer v. Bolander (Iowa), 4 G. Gr. 201 84
Slaughterhouse Cases, 16 Wall. 36 78
Smith v. Kansas City Title & Trust Co., 255 U. S. 180 61
Smith v. Spillman, 135 Ark. 279 85
Spokane Traction Co. v. Granath, 42 Wash 506 ..... 3, 24
Standard Oil Co. v. City of Bowling Green, 244 Ky. 362 ..... 3, 24
State v. Bassett, 100 Conn. 430 ..... 5, 6, 13, 15, 20, 34, 36, 65, 70, 71, 93
State v. Bradshaw, 20 Fla. 79 85
State v. Dyer (Fla.), 143 So. 201 ..... 12, 13, 60, 62
State v. Prevatt (Fla.), 148 So. 578 ..... 12, 16, 60, 74
State v. Darling (Iowa), 246 N. W. 390 ..... 21, 23, 97, 103
State v. Hutchinson Ice Cream Co., 168 Iowa 1 ..... 8, 14, 24, 46, 66
State v. Schlenker, 112 Iowa 642 ..... 7, 42
State v. Winchill & Rosenthal, 147 La. 781 ..... 22, 102
State v. Moeller (Minn.), 249 N. W. 330 11
State v. Loomis, 115 Mo. 307 ..... 23, 103
State v. Hall (Neb.), 249 N. W. 756 ..... 12, 60
State v. Fitzpatrick, 16 R. I. 54 ..... 7, 42
State v. Morrison (S. Dak.), 249 N. W. 563 ..... 13, 62
State v. Mamlock, 58 Wash. 631 ..... 9, 47
State v. Pitney, 79 Wash. 608 ..... 9, 48
State v. Superior Court, 24 Pac. (2d) 87 ..... 22, 99
State v. Sponaugle, 45 W. Va. 415 94
State v. Harper, 182 Wis. 148 ..... 14, 15, 65, 70
State v. Redmon, 135 Wis. 89 ..... 15, 69
Steele-Smith Drygoods Co. v. Birmingham Ry., Light & Power Co., 73 So. 215 ..... 3, 25
Stetter v. O'Hare, 69 Ore. 519 ..... 9, 47
St. Louis Poster Advertising Co. v. St. Louis, 249 U. S. 269 90
Stockton v. Williams (Mich.), 1 Doug. 546 ..... 3, 24
Stone v. Mississippi, 101 U. S. 814 ..... 71, 75
Strafford v. Sharon, 61 Vt. 126 92
Streich v. Board of Education, 34 S. D. 169 ..... 8, 45
Strickley v. Highland Boy Gold Mining Co., 200 U. S. 527 ..... 43, 90

Texas & New Orleans Rd. Co. v. Miller, 221 U. S. 408 78
Thornberg v. Jorgenson, 60 F (2d) 471 85
Thorpe v. Rutland & Burlington R. R. Co., 27 Vt. 140 ..... 9, 48
Thresher v. Atchison, 117 Cal. 78 85
Town of Greenriver v. Fuller Brush Co., 65 F (2d) 112 ..... 21, 97
Townsend, Ex parte, 64 Tex. 350 ..... 9, 47
Tufts v. Tufts, 8 Utah 142 92
Union Dry Goods Co. v. Georgia Public Service Corp., 248 U. S. 372 ..... 11, 13, 16, 19, 57, 62, 76, 78, 90
United States v. Des Moines Navigation & Ry. Co., 142 U. S. 510 ..... 14, 61, 66
United States v. Lanza, 260 U. S. 377 ..... 13, 62
Utah Mfrs. Ass'n v. Stewart (Utah), 23 Pac. (2d) 229 ..... 12, 60
Vanzant v. Waddel, 10 Tenn. (2 Yerg.), 259 ..... 23, 103
Van Hoffman v. Quincy, 71 U. S. 535 85
Village of Carthage v. Frederick, 122 N. Y. 268 ..... 4, 5, 9, 26, 33, 48
Waugh v. Shirer (Iowa), 249 N. W. 246 ..... 12, 60
Wayne Township v. Brown (Ind.), 186 N. E. 841 ..... 12, 22, 60, 99
Welch v. Swasey, 214 U. S. 91 90
Wesson v. Washburn Iron Co. (Mass.), 13 Allen 95 29
West v. City of Asbury, 89 N. J. Law 402 ..... 22, 102
White v. Hart, 80 U. S. 646 85
Wilder v. Campbell, 4 Ida. 695 85
Williams v. Mayer, 58 S. Ct. 431 ..... 13, 16, 62, 74
Winter v. Barret (Fla.), 180 N. E. 118 94
Women's Kansas City St. Andrew Society v. Kansas City, 58 F (2d) 592 ..... 8, 9, 48
Wonder Bakeries Co., Inc., v. White, 3 F. Supp. 311 ..... 13, 62
Young v. Lemeux, 79 Conn. 440 71
Younker v. Susong, 173 Iowa 668 ..... 11, 59
Zahn v. Board of Public Works, 274 U. S. 325 ..... 14, 67
Zucht v. King, 260 U. S. 174 ..... 22, 103

Supreme Court of the United States

OCTOBER TERM, 1933

No. 370

HOME BUILDING AND LOAN ASSOCIATION
Appellant,

vs.

JOHN H. BLAISDELL, ET AL.,
Respondents.

ON APPEAL TO THE SUPREME COURT OF THE UNITED STATES

BRIEF AND ARGUMENT OF VERNON A. VROOMAN AS AMICUS CURIAE

PRELIMINARY STATEMENT

The undersigned, appearing as *amicus curiae* in this case, makes no attempt, in this brief, to argue in opposition to any particular brief heretofore filed in the case. The fundamental question herein is, whether Chapter 339, Laws of 1933 of the State of Minnesota, providing for an extension

of the period in which lands may be redeemed from sales made under foreclosure of mortgages, and touching existing mortgages and also sales made prior to the enactment of the chapter, offends against the Constitution of the United States. The provisions of that chapter and the facts of the case are already before the court. With respect to the fundamental question, the undersigned begs leave to present to this court, without direct reference to the record of the case or to the briefs already filed herein, certain propositions which, as a result of his study of the Constitution, and of the decision made herein by the Supreme Court of Minnesota and reported in 249 N. W. at 334, and of many other decisions, he believes to be controlling on the question and determinative of the correct doctrine as to the relation between the federal constitution and the police power of a state.

This brief is submitted in the spirit and attitude which the Court of Appeals of the State of New York, speaking through Chief Judge Pound, expressed in a recent case, *People v. Nebbia*, 262 N. Y. 259, 186 N. E. 694, 699—— the spirit and attitude of "full respect for the Constitution as an efficient frame of government in peace and war, under normal conditions or in emergencies, with cheerful submission to the rule of the Supreme Court that legislative authority to abridge property rights and freedom of contract can be justified only by exceptional circumstances and, even then, by reasonable regulation only, * * *."

SUMMARY OF ARGUMENT.

I.

The statute, because of the degree to which and the manner in which it subserves the general welfare in a time of emergency, springs from a constitutional exercise of the police power.

A. The terms "general welfare," "public welfare" and "common welfare" are synonymous.

Stockton v. Williams (Mich. 1845), 1 Doug. 546, 570;
Kirkendall v. Omaha (1894), 39 Neb. 1, 57 N. W. 752, 754;
Spokane Traction Co. v. Granath (1906), 42 Wash. 506, 85 Pac. 261, 264;
Aymette v. State (1840), 2 Humph. (21 Tenn.) 154 158.

Many and diverse matters raise questions of general welfare.

Standard Oil Co. v. City of Bowling Green (1932), 244 Ky. 362, 50 S. W. (2d) 960, 961.

Economic matters raise such questions.

Miller v. Board of Public Works (1925), 195 Cal. 477, 234 Pac. 381, 38 A. L. R. 1479;
Pettis v. Alpha Alpha Chapter (1927), 115 Neb. 525, 213 N. W. 835, 838.

General welfare connotes the antithesis of an interest solely that of an individual or class.

See *Steele-Smith Dry Goods Co. v. Birmingham Ry., Light & Power Co.* (1916), 15 Ala. App. 271, 73 So. 215, 216.

And see: *Platt v. Craig* (1902), 66 Ohio 75, 63 N. E. 594, 595.

General welfare is the welfare of all who constitute a given community (e. g., a city, a State, the United States).

Chamberlain v. City of Burlington (1865), 19 Iowa 395, 403;
Cawker v. Meyer (1911), 147 Wis. 320, 133 N. W. 157, 159, 37 L. R. A. N. S. 510.

At least in certain connections a distinction has been taken between "general" and "universal," that being general which is merely extensive or widespread.

Koen v. State (1892), 35 Neb. 676, 53 N. W. 595, 596, 17 L. R. A. 821;
Puget Sound Pub. Co. v. Times Printing Co. (1903), 33 Wash. 551, 74 Pac. 802, 805;
Brooklyn Church Society v. Brooklyn Free Kindergarten Society, 152 N. Y. Supp. 41, 43;
New Standard Dictionary, p. 1018, defg. "general" as an adjective.

In a sense, however, general (public, common) welfare is in any view of the matter the welfare of all. That which is directly for the welfare of many may bring welfare indirectly to all others, so that, in the ultimate, the welfare of all is promoted. Individuals and classes find their *ultimate* welfare in the welfare of all.

Village of Carthage v. Frederick (1890), 122 N. Y. 268, 25 N. E. 480, 481.

And see: *Chicago, Burlington & Quincy Ry. Co. v. People* (1906), 200 U. S. 561, 593, 26 S. Ct. 341, 56 L. Ed. 596.

B. General welfare is the supreme aim of the constitution, as of all organic law. Promotion of the general welfare is the most general purpose stated in the preamble to the constitution. All other purposes stated in the preamble range under the one head, promotion of the general welfare.

A constitution must be construed "in the light of the purposes for which it was ordained."

Commonwealth v. City of Newport News (Va., 1932), 164 S. E. 689,696.

C. On a question of general welfare, the spirit rather than the letter of the constitution controls.

Village of Carthage v. Frederick (1890), 122 N. Y. 268, 25 N. E. 480, 481;
Packet Co. v. Keokuk (1877), 95 U. S. 80, 87, 24 L. Ed. 377.

D. The police power, like the constitution, has for its object the general welfare.

Noble State Bank v. Haskell (1910), 219 U. S. 104, 111, 31 S. Ct. 186, 55 L. Ed. 112, 32 L. R. A. N. S. 1062, Ann. Cas. 1912 A 487.

All proper objects of the police power range under the one head, promotion of the general welfare, and numerous definitions and characteristics of the power embrace the term "general welfare" in such manner as to make clear that the promotion of that welfare is the essential office of the power, and the foundation of every exercise thereof.

12 C. J., Constitutional Law, sec. 430.

And see:
Miller v. Board of Public Works (1925), 195 Cal. 477, 234 Pac. 381, 383, 38 A. L. R. 1479;
Pettis v. Alpha Alpha Chapter (1927), 115 Neb. 525, 213 N. W. 835, 838;
State v. Bassett (1924), 100 Conn. 430, 123 Atl. 842, 37 A. L. R. 131, (United States Supreme Court decisions cited);
Cook County v. Chicago (1924), 311 Ill. 324, 142 N. E. 512, 516, 31 A. L. R. 442.

And the following recent cases:

Graham v. Kingwell (Cal.), 24 Pac. (2d) 488;
People v. Coulides, 265 N. Y. Supp. 765, citing *Baker v. Walker*, 204 U. S. 311, 27 S. Ct. 289, 51 L. Ed. 499.

E. It is a commoplace that "police power" is difficult of definition.

6 R. C. L., Constitutional Law, sec. 183.

Broadly considered, "police power" is synonymous with "sovereign power."

6 R. C. L., Constitutional Law, sec. 184;
12 R. C. L., Constitutional Law, sec. 415;
Citizens' Ins. Co. v. Hebert (1916), 139 La. 708, 717, 71 So. 955, 958.

The exercise of the police power is at least a manifestation of sovereign power.

Chicago, Burlington & Quincy Ry. Co. v. People (1905), 200 U. S. 561, 588, 26 S. Ct. 431, 56 L. Ed. 596;
Miller v. Board of Public Works (1925), 195 Cal. 477, 234 Pac. 38, 3 A. L. R. 1479;
McKeon v. New York, New Haven & Hartford Ry. Co. (1902), 75 Conn. 347, 53 Atl. 656, 657, 61 L. R. A. 730, quoting from *The License Cases,* 5 How. (46 U. S.) 504, 583, 12 L. Ed. 256;
State v. Bassett (1924), 100 Conn. 430, 123 Atl. 842, 843, A. L. R. 131;
City of Chicago v. Washingtonian Home (1919), 289 Ill. 206, 124 N. E. 416, 419.

Less broadly considered, police power is sovereign power as exercised to meet some great public need.

Noble State Bank v. Haskell (1910), 219 U. S. 104, 111, 31 S. Ct. 186, 55 L. Ed. 112, 32 L. R. A. N. S. 1062, Ann. Cas. 1912 A 487.

Thus it is "society's natural right of self defense."

McGuire v. Chicago, Burlington & Quincy Ry. Co. (1906), 131 Iowa 340, 354, 108 N. W. 902, 907.

And see:

12 C. J., Constitutional Law, sec. 415, and f. n. 13;
Barret v. Rickard (1910), 76 Neb. 769, 124 N. W. 153, 155-6;
Pettis v. Alpha Alpha Chapter (1927), 115 Neb. 525, 213 N. W. 835, 838.

F. As to the relation between the police power and the

letter of the constitution, a balance-of-welfare theory seems to be developing.

The process of inclusion and exclusion is gradually making out the boundaries of the power.

6 R. C. L., Constitutional Law, sec. 185;
Noble State Bank v. Haskell, supra, (219 U. S. 104, 111).

The question whether legislation contravening the letter of the constitution is unconstitutional involves, among other things, the *degree* to which the legislation promotes the general welfare.

Pennsylvania Coal Co. v. Mahon, supra, (260 U. S. 393, 416).

G. The state may balance its police power against the letter of the federal constitution.

The police power is inherently the state's.

12 C. J., Constitutional Law, sec. 417;
2 Cooley, Constitutional Limitations (8th ed.), p. 1232.

The federal constitution has not deprived the state of the power.

Brown v. Maryland (1827), 12 Wheat. (25 U. S.) 419, 443;
Boston Beer Co. v. Massachusetts (1877), 97 U. S. 25, 33, 24 L. Ed. 989;
State v. Schlenker (1900), 112 Iowa 642, bot. 649, 84 N. W. 698, 699, 51 L. R. A. 347, 84 Am. St. Rep. 360;
State v. Fitzpatrick (1888), 16 R. I. 54, 11 Atl. 767, 769;
City of Rochester v. West (1898), 29 App. Div. 125, 51 N. Y. Supp. 482, 484;
City of Westport v. Mulholland (1900), 159 Mo. 86, 60 S. W. 77, 78, 53 L. R. A. 442.

Re the contract clause of the federal constitution.

Burdick, The Law of the American Constitution, secs. 196 and 197.

Re the due process and the equal protection clause.

2 Cooley, Constitutional Limitations (8th ed.), p. 1234, f. n.

H. Changes in conditions, whether gradual or sudden, may render promotive of general welfare, and constitutional, measures that formerly would not have been so.

Block v. Hirsch (1921), 256 U. S. 135, 155, 41 S. Ct. 458, 65 L. Ed. 865, 16 A. L. R. 165;
Edgar A. Levy Leasing Co. v. Siegel (1922), 258 U. S. 242, 246, 42 S. Ct. 289, 66 L. Ed. 595;
6 R. C. L., Constitutional Law, sec. 188;
Martin v. Hunter (1816), 1 Wheat. (14 U. S.) 304, 326;
Miller v. Board of Public Works (1925), 195 Cal. 477, 234 Pac. 381, 383;
Pettis v. Alpha Alpha Chapter (1927), 115 Neb. 545, 213 N. W. 835, 838;
City of Aurora v. Burns, 319 Ill. 84, 149 N. E. 784, 788;
Streich v. Board of Education (1914), 34 S. D. 169, 147 N. W. 779, 781, Ann. Cas. 1917 A. 760;
People v. Nebbia (1933), 262 N. Y. 259, 186 N. E. 694, 699.

I. An economic depression may constitute or comprise such an emergency as justifies an unusual exercise of the police power.

General welfare embraces economic welfare.

State v. Hutchinson Ice Cream Co. (1914), 168 Iowa 1, 10, 147 N. W. 195, 199, L. R. A. 1917 B. 1918;
Pettis v. Alpha Alpha Chapter (1927), 115 Neb. 525, 213 N. W. 835, 838.

Various definitions of police power refer to "prosperity," "economic welfare," "economic concern," etc.

Bankers' Trust Co. v. Russell (Mich.) 249 N. W. 27, 29 (United States Supreme Court decisions cited.)

Promotion of such objects is frequently stated to be among the reasons for the exercise of the power.

Chicago, Burlington & Quincy Ry. Co. v. People, supra, (200 U. S. 561, 592);
Noble State Bank v. Haskell, supra, (219 U. S. 104, 111);
Bacon v. Walker, 204 U. S. 311, 318, 51 L. Ed. 499, 27 S. Ct. 291;
Barbier v. Connolly (1885), 113 U. S. 27, 31, 5 S. Ct. 357, 28 L. Ed. 923;
Women's Kansas City St. Andrew Society v. Kansas City (1932), 58 F (2d) 593, 599;
City of Des Moines v. Manhattan Oil Co. (1922), 193 Iowa 1096, bet. 1104, 184 N. W. 823, 23 A. L. R. 1322;
People v. LaFetra (1921), 230 N. Y. 429, 130 N. E. 601, 606;
Stetter v. O'Hare (1914), 69 Ore. 519, 531, 139 Pac. 743, 747, Ann. Cas. 1916 A 217, 222;
State v. Pitney (1914), 79 Wash. 608, 140 Pac. 918, 919, Ann. Cas. 1916 A, 209;
Ex parte Townsend (1911), 64 Tex. Cr. 350, 144 S. W. 628, 631, 33 Ann. Cas. 1914 C 814, 817;
State v. Mamlock (1910), 58 Wash. 631, 633, 109 Pac. 47, 137 Am. St. Rep. 1085;
Morrison v. State (1906), 116 Tenn. 534, 543, 95 S. W. 494, 496;
Village of Carthage v. Frederick (1890), 122 N. Y. 268, 25 N. E. 480, 482;
Thorpe v. Rutland & Burlington Rd. Co. (1854), 27 Vt. 140, 149, 62 Am. Doc. 625, 633.

J. The statute is not, and does not profess to be, a cure for the depression or any phase of the depression, but merely a means of ameliorating, during the economic emergency, a certain condition fraught with public detriment and danger.

It is to be noted, too, that the statute is a legislative exercise of a legislative power, and not in any sense or degree an abdication of such power.

K. The police power is older than any constitution, and although it has never remained entirely unused in this country, the exercise of the power has become more and more frequent and varied during the past generation.

City of Rochester v. West (1898), 51 N. Y. Supp. 482, 484;
Brown v. Maryland, 12 Wheat. (25 U. S.) 419, 443;
1 Warren, The Supreme Court in United States History, p. 695, f. n. 2;
Munn v. Illinois, 94 U. S. 113, 125, 24 L. Ed. 77;
People v. Nebbia (1933), 262 N. Y. 259, 186 N. E. 694, 698;
Leonard v. State (1919), 100 Ohio St. 456, 127 N. E. 464, 465;
City of Westport v. Mulholland (1900), 159 Mo. 86, 60 S. W. 70, 78, 53 L. R. A. 542;
Chicago, Milwaukee & St. Paul Ry. Co. v. City of Milwaukee (1897), 97 Wis. 422, 72 N. W. 1118, 1123;
Burdick, The Law of the American Constitution, secs. 196 and 197;
2 Warren, The Supreme Court in United States History, p. 735 et seq., esp. 740-42.

II.

Certain matters which the courts judicially notice, certain presumptions with which they surround legislation, and the general attitude which judicial tribunals take toward legislation, all tend to support the act.

A. The court knows that a grave economic emergency exists.

The courts judicially notice matters of common knowledge.
23 C. J., Evidence, sec. 1810.

This court has heretofore judicially taken notice of an emergency.

Block v. Hirsch, supra, (256 U. S. 135, 154);
Chastleton Corp. v. Sinclair (1924) 264 U. S. 543, 547, 68 L. Ed. 841, 44 S. Ct. 405.

This court knows that on March 6, 1933 the President proclaimed the existence of an economic emergency.

23 C. J., Evidence, sec. 1900.

The Federal Emergency Relief Act, the Agricultural Adjustment Act, the National Industrial Recovery Act, and the Emergency Railroad Transportation Act, have apprised this court of the existence of an emergency.

23 C. J., Evidence, sec. 1947.

The court must take judicial notice of statements in the Congressional Record concerning the economic depression.

23 C. J., Evidence, sec. 1934, and foot notes, particularly fn. 95 (a, 4).

This court knows of the existence of a public exigency in Minnesota in connection with foreclosures of real estate mortgages.

Block v. Hirsch, supra, (256 U. S. 135, 154);
Chastleton Corp. v. Sinclair, supra (264 U. S. 543, 547);
Union Dry Goods Co. v. Georgia Public Service Corp., 248 U. S. 372, 39 S. Ct. 117, 9 A. L. R. 1420;
State v. Moeller, 249 N. W. 330.

B. There is an almost overwhelming presumption that an act of Congress or a State Legislature is constitutional.

Third Dec. Dig., Constitutional Law, sec. 48;
12 C. J., Constitutional Law, secs. 221 and 222;
McCabe v. Atchison, etc., Ry. Co. (1911), 186 Fed. 966; affd. 235 U. S. 151, 59 L. Ed. 169, 35 S. Ct. 69;
Eckerson v. Des Moines (1908), 137 Iowa 452, 115 N. W. 177;
Hunter v. Colfax Consol. Coal Co. (1916), 175 Iowa 245, 154 N. W. 1037, L. R. A. 1917 D, 15, Ann. Cas. 1917 E, 803;
Nolen v. Riechman (1915), 225 Fed. 812;
Younker v. Susong (1916), 173 Iowa 663, 156 N. W. 24;

Waugh v. Shirer (Iowa), 249 N. W. 430, 435;
Jefferson County v. Busby (Ala.), 148 So. 411, 413;
State v. Dyer (Fla.), 143 So. 201, 203;
State v. Prevatt (Fla.), 148 So. 578, 579;
Wayne Township v. Brown (Ind.), 186 N. E. 841, 847;
Chassanoil v. City of Greenwood (Miss.)), 114 So. 781, 783;
Rider v. Cooney (Mont.), 23 Pac. (2d), 261;
State v. Hall (Neb.), 249 N. W. 756, 758-9;
People v. Nebbia, 262 N. Y. 269, 186 N. E. 694, 699;
Commonwealth v. Great American Indemnity Co. (Pa.), 167 Atl. 793, 797-8;
Utah Mfrs. Ass'n v. Stewart (Utah), 23 Pac. (2d) 229, 232;
Richmond Linen Supply Co. v. City of Lynchburg (Va.), 169 S. E. 554;
Aetna Ins. Co. v. Commonwealth (Va.), 169 S. E. 859, 864;
Mason v. City of Seattle (Wash.), 24 Pac. (2d) 91, 92;
Leonhart v. Board of Education (W. Va.), 170 S. E. 418, 421.

C. The court is not concerned with the motives of a State Legislature any more than with those of Congress.

United States v. Des Moines Navigation & Ry. Co. (1891), 142 U. S. 510, 544, 12 S. Ct. 308, 35 L. Ed. 1099;
12 C. J., Constitutional Law, sec. 224;
Third Dec. Dig., Constitutional Law, sec. 70 (3);
Smith v. Kansas City Title & Trust Co. (1921), 255 U. S. 180, 210, 41 S. Ct. 243, 65 L. Ed. 577;
Hamilton v. Kentucky Distilleries Co. (1919), 251 U. S. 146, 161, 40 S. Ct. 106, 64 L. Ed. 194;
Appalachian Elec. Power Co. v. Smith (D. C., W. Va.) 4 Fed. Supp. 6, 22;
Blanchard v. City of New York, 262 N. Y. 5, 186 N. E. 29, 32.

D. The court is not concerned with the wisdom or policy of legislation.

Third Dec. Dig., Constitutional Law, sec. 70 (3);

National Union Fire Ins. Co. v. Warburg (1922), 260 U. S. 71 (see 77), 43 S. Ct. 32, 67 L. Ed. 314;
United States v. Lanza (1922), 260 U. S. 377 (see 385) 43 S. Ct. 141, 67 L. Ed. 314;
Hamilton v. Kentucky Distilleries Co., supra, (251 U. S. 146, 161);
Block v. Hirsch, supra, (256 U. S. 135, 138);
Union Dry Goods Co. v. Georgia Public Service Corp., supra, (248 U. S. 372, 374);
Atlantic Coast Line Rd. Co. v. Goldsboro, supra, (232 U. S. 548, 588).

Recent cases:

Williams v. Mayor, 53 S. Ct. 431, 433;
Wonder Bakeries Co., Inc. v. White, 3 F. Supp. 311;
Jefferson County v. Busby (Ala.), 148 So. 411, 413;
State v. Dyer (Fla.), 143 So. 201, 203-4;
Mississippi State Tax Commission v. Flora Drug Co. (Miss.), 148 So. 373, 377;
Little v. American State Bank (Mich.), 249 N. W. 22, 23;
People v. Nebbia, 262 N. Y. 269, 186 N. E. 694, 699;
McPherson v. Fisher (Ore.), 23 Pac. (2d) 913, 914;
State v. Morrison (S. Dak.), 249 N. W. 563, 565;
Leonhart v. Board of Education (W. Va.), 170 S. E. 418, 421.

E. The legislature is the first judge of what is for the greatest good of the greatest number, and so for the true ultimate good of all.

Missouri, Kansas & Texas Ry. Co. v. May (1904), 194 U. S. 267, 270, 24 S. Ct. 638, 48 L. Ed. 971;
State v. Bassett (1924), 100 Conn. 430, 123 Atl. 842, 37 A. L. R. 131.

F. Before the court can overturn the act, the court must find that the legislature made a mistake as to whether there is any basis in fact for a finding that the public welfare is jeopardized, else a mistake as to whether there is any

reasonable connection between the provisions of the act and the thing which jeopardizes that welfare.

American Coal Mining Co. v. Special Coal & Food Commission (1920), 268 Fed. 563; (1921) appeal dismissed, 258 U. S. 632, 66 L. Ed. 801, 42 S. Ct. 273.

And see:

State v. Harper (1923), 182 Wis. 148, 196 N. W. 451, 453, 33 A. L. R. 269;
State v. Coulides, 265 N. Y. Supp. 765, 768, (recent case).

A legislature is presumed to have passed an act with full knowledge of existing conditions and to have found the facts on which its power to act must be predicated.

12 C. J., Constitutional Law, secs. 222 and 225;
United States v. Des Moines Navigation & Ry. Co., *supra*, (142 U. S. 510, 544);
State v. Hutchinson Ice Cream Co. (1914), 168 Iowa 1, 147 N. W. 195, L. R. A. 1917 B, 198; (1916) affd. 242 U. S. 153, 37 S. Ct. 28, 61 L. Ed. 217;
Hutchens v. Jackson (N. Mex.), 23 Pac. (2d) 355, (recent case);
Leonhart v. Board of Education (W. Va.), 170 S. E. 418, 421, (recent case).

It seems the presumption is fortified where a basis in fact for the legislation obviously exists, as where the existence of the basis is a matter of judicial knowledge, and that where there is reasonable doubt whether such basis exists the presumption controls.

Zahn v. Bd. of Public Works (1925), 274 U. S. 325, 328, 47 S. Ct. 594, 71 L. Ed. 1074;
The Chastleton Corp. v. Sinclair, supra, (264 U. S. 543, 547);
People v. La Fetra (1921), 230 N. Y. 429, 130 N. E. 601, 604;

Leonhart v. Board of Education (W. Va.), 170 S. E. 418, 421, (recent case).

Legislation "necessary for the public welfare" is legislation that has such a basis.

State v. Redmon (1907), 134 Wis. 89, 114, N. W. 137, 126 Am. St. Rep. 1003, 14 L. R. A. N. S. 229, 15 Ann. Cas. 408.

And see:

Chicago v. Washingtonian Home (1919), 289 Ill. 206, 124 N. E. 416, 419, 15 Ann. Cas. 408.

The only other requirement is that the legislation shall amount to some reasonable way of meeting the detriment or danger which the situation unfolds.

Third Dec. Dig., Constitutional Law, sec. 70 (3) (see p. 557);
Chicago, Burlington & Quincy Ry. Co. v. People, supra, (200 U. S. 561, 592);
Block v. Hirsch, supra, (256 U. S. 135, 158);
City of Aurora v. Burns, 319 Ill. 84, 149 N. E. 784, 787;
State v. Bassett (1924), 100 Conn. 430, 123 Atl. 842, 37 A. L. R. 134;
State v. Harper (1923), 182 Wis. 148, 196 N. W. 451, 452-3, 33 A. L. R. 269.

G. Relative to matters of general welfare, a legislature has a wide discretion.

Manigault v. Springs (1905), 199 U. S. 473, 480, 26 S. Ct. 127, 50 L. Ed. 274;
State v. Bassett (1924), 100 Conn. 430, 123 Atl. 842, 37 A. L. R. 134.

H. "A limit in time, to tide over a passing trouble, well may justify a law that could not be upheld as a permanent change."

Block v. Hirsch, supra, (256 U. S. 135, 157).

And see:

The Chastleton Corp. v. Sinclair, supra, (264 U. S. 543, 547).

But emergency legislation may extend sufficiently beyond the emergency to guard against its after effects.

Hamilton v. Kentucky Distilleries Co., supra, (251 U. S. 146, 161).

I. It does not devolve upon appellees to show that the statute is constitutional, but upon appellant to show, if possible, that it is not.

12 C. J., Constitutional Law, sec. 221;
Third Dec. Dig., Constitutional Law, sec. 48 (see p. 473);
People v. City Prison Warden, 154 App. Div. 413, 139 N. Y. Supp. 277, 286.

Recent cases in point:

Williams v. Mayor, 53 S. Ct. 431, 433;
Jefferson County v. Busby (Ala.), 148 So. 411, 413;
State v. Prevatt (Fla.), 148 So. 578, 579;
McPherson v. Fisher (Ore.), 23 Pac. (2d) 913.

III.

The statute is not repugnant to the contract clause of Section 10 of Article 1 of the Constitution of the United States.

A. The letter of the clause sometimes yields to considerations of general welfare.

Pennsylvania Hospital v. Philadelphia (1917), 245 U. S. 20, 23, 38 S. Ct. 35, 62 L. Ed. 124;
Union Dry Goods Co. v. Georgia Public Service Corp., supra, (248 U. S. 372, 377);
2 Cooley, Constitutional Limitations (8th ed.), p. 1237;

Third Dec. Dig., Constitutional Law, sec. 117.

B. Contracts are inherently subject to yielding to the exercise of the police power.

Third Dec. Dig., Constitutional Law, sec. 117;
12 C. J., Constitutional Law, sec. 603;
2 Cooley, Constitutional Limitations (8th ed.), p. 1237;
Edgar A. Levy Leasing Co., supra, (258 U. S. 242, 249);
Marcus Brown Holding Co. v. Feldman (1921), 256 U. S. 170, 198, 41 S. Ct. 465, 65 L. Ed. 877;
Atlantic Coast Line Rd. Co. v. Goldsboro, supra, (232 U. S. 548, 558);
City of Butte v. Roberts (Mont.), 23 Pac. (2d) 342, (recent case).

C. Otherwise, individuals could control the police power and defeat the general welfare.

Manigault v. Springs, supra, (199 U. S. 473, 480);
12 C. J., Constitutional Law, sec. 603;
Raymond Lumber Co. v. Raymond Light, etc., Co. (1916)), 92 Wash. 330, 159 Pac. 133, 136, L. R. A. 1917 C. 574.

D. The sanctity of contracts does not protect them from the exercise of the power. The sacredness of contractual obligations was not the reason for incorporating the clause into the constitution. The reason probably was, to discourage repudiation of debts by the states.

E. If a sheriff's certificate of sale evidences a contract between him or the state and a purchaser at an execution sale, the obligation of that contract, like the obligation of any other contract, is secondary to the matter of public welfare, which is the primary concern of all law.

F. Whether a legislative act validly impairs the obligation of contract does not depend upon whether the act

alters the substantive or alters the adjective law pertaining to contract.

Block v. Hirsch, supra, (256 U. S. 135, 158);
Chadwick v. Moore (Pa., 1844), 8 Watts & Sergeant 49.

G. If under the police power the legislature can interfere with the remedy, the legislature can so interfere at any stage of the remedy. It would be anomalous if general welfare were the paramount consideration at one point but not at another.

H. Cases like *Bronson v. Kinzie* (1843), 42 U. S. (1 How.) 311, 11 L. Ed. 143; *Barnitz v. Beverly* (1895), 163 U. S. 118, 16 S. Ct. 1042, 41 L. Ed. 93; etc., etc., containing hardly an intimation about police power or emergency legislation, are of no value on the question whether the adjective as well as the substantive law shall not yield to the police power and the exigencies of public welfare.

It is not without reason that in a recent case, *Addis v. Selig,* 264 N. Y. Supp. 816 (see top of 824), consideration of the police power is eliminated from an opinion in which *Bronzon v. Kinzie, supra,* is discussed.

If cases, state or federal, like *Bronson v. Kinzie,* and *Barnitz v. Beverly,* may by any remote possibility be regarded as emergency or police-power cases, they must yield to principles announced in later decisions of this court.

IV.

The statute is not repugnant to the due process clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

A. The letter of the due process clause yields to considerations of general welfare.

Third Dec. Dig., Constitutional Law, sec. 253;
12 C. J., Constitutional Law, sec. 962, citing numerous United States Supreme Court and other decisions;
3 Words and Phrases, p. 2253;
Edgar A. Levy Leasing Co. v. Siegel, supra, (258 U. S. 242, 247);
Marcus Brown Holding Co. v. Feldman, supra, 256 U. S. 170;
Union Dry Goods Co. v. Georgia Public Service Corp., supra, (232 U. S. 548, 588);
People v. La Fetra (1921), 230 N. Y. 429, 130 N. E. 601, 605-6;
Chapman v. Boynton, 4 Fed. Supp. 43, 46 (recent case), citing several United States Supreme Court decisions;
Graham v. Kingwell (Cal.), 24 Pac. (2d) 488, 489, recent case).

B. All property is held subject to the possibility that under the police power it may be taken notwithstanding the due process clause. Every contract or property right, whether vested or not, is inherently subject to the possibility.

12 C. J., Constitutional Law, sec. 962;
Atlantic Coast Line Rd. Co. v. Goldsboro, (232 U. S. 548);
Chicago, Burlington & Quincy Ry. Co. v. People, supra, (200 U. S. 561, 588);
Mugler v. Kansas (1887), 123 U. S. 623, 8 S. Ct. 273, 31 L. Ed. 205;
Hubbell v. Higgins (1910), 148 Iowa 36, 126 N. W. 914, Ann. Cas. 1912 B, 822;
Martin v. Blattner (1886), 68 Iowa 286, 289, 25 N. W. 131, 133, 135, 27 N. W. 244;
City of Butte v. Roberts (Mont.), 23 Pac. (2d) 342.

C. So far-reaching is the police power in its relation to the due process clause that notwithstanding this clause a

person may, under the power, be deprived of property without compensation.

Edgar A. Levy Leasing Co. v. Siegel, supra, (258 U. S. 242, 247);
Block v. Hirsch, supra, (256 U. S. 135, 156);
Hamilton v. Kentucky Distilleries Co., supra, (251 U. S. 146);
Atlantic Coast Line Rd. Co. v. Goldsboro, supra, (232 U. S. 548, 558).

D. Cases like *Bottdorf v. Lewis* (1903), 121 Iowa 27, 95 N. W. 26, and *Edworthy v. Iowa Savings & Loan Assn.* (1901), 114 Iowa 220, 86 N. W. 315, which are not police-power or emergency-situation cases, are of no value on the question whether vested or property rights are not as subject as any other rights to yield to the police power, in time of emergency, upon considerations of public welfare.

E. The statute must be balanced, in point of general welfare, against the letter of the due process clause, and the question answered whether the statute manifests a merely arbitrary attempt to supervene the letter.

Purity Extract and Tonic Co. v. Lynch (1912), 226 U. S. 192, 204, 33 S. Ct. 44, 57 L. Ed. 184;
State v. Bassett (1924), 100 Conn. 430, 123 Atl. 842, 37 A. L. R. 131.

F. Although the legislature could, under the police power, for the public benefit, deprive appellant and others of property without due process of law, the legislature has not deprived appellant of anything whatsoever without such process.

Evidently appellant has had a hearing upon proper notice, with notice and hearing according to the laws applicable to other like cases within the purview of the statute,

and with the same laws applied to the facts of the case as are applicable to the facts of all other like cases, and with these laws applied in the same manner in which they are applicable to all other cases like the case at bar.

H. A redemption law is "favorable to the rights of property."

Gault's Appeal (1859), 33 Pa. 94, 98;
Caro v. Wollenberg (1913), 68 Ore. 420, 136 Pac. 866, 869.

V.

The statute is not repugnant to the equal protection clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

A. The equal protection clause yields to considerations of general welfare.

Third Dec. Dig.; Constitutional Law, secs. 117 and 212;
12 C. J., Constitutional Law, sec. 894;
Barbier v. Connolly, supra, 113 U. S. 27, 31;
Fisher Flouring Mills Co. v. Brown (1924), 109 Wash. 680, 187 Pac. 399, 403.

B. But the statute is *not* class legislation.

There is neither unjust discrimination nor the denial of equal protection in a statute applicable to all alike who are in the same situation or the same natural classification.

Barbier v. Connolly, supra, (113 U. S. 27, 32);
Town of Green River v. Fuller Brush Co., 65 F (2d) 112, 114-5, (recent case), citing several decisions of the Supreme Court of the United States;
State v. Darling (Iowa), 246 N. W. 390 (recent case).

C. Reasonable classification has never been held unconstitutional.

Third Dec. Dig., Constitutional Law, sec. 48 (see p. 474);
Little v. American State Bank (Mich.), 249 N. W. 22, 23, (recent case).

The legislature has wide discretion to make a classification on any reasonable basis. The existence, at the time of a legislative enactment, of any conceivable reasonable basis for the classification must be assumed and the burden of showing that no such basis then existed is upon whoever assails the classification as arbitrary.

Lindsley v. Natural Carbonic Gas Co. (1911), 220 U. S. 61, 78, 55 L. Ed. 369, 31 S. Ct. 337, Ann. Cas. 1912 C, 160;
Wayne Township v. Brown (Ind.), 186 N. E. 841, 850, (recent case);
State v. Superior Court (Wash.), 24 Pac. (2d) 87, 88.

D. If, in behalf of the general welfare, legislation touches a certain field, the legislation need not cover the whole field in order not to offend against the equal protection clause.

Cooley, Constitutional Limitations (8th ed.), p. 1231;
Farmers and Merchants Bank v. Federal Reserve Bank (1923), 262 U. S. 649, 661, 43 S. Ct. 651, 67 L. Ed. 1157, 30 A. L. R. 635;
Zucht v. King (1922), 260 U. S. 174, 177, 43 S. Ct. 24, 67 L. Ed. 194;
City of New Orleans v. LeBlanc (1920), 139 La. 113, 71 So. 248;
State v. Winehill & Rosenthal (1920), 147 La. 781, 86 So. 181; (1922), 258 U. S. 605, 66 L. Ed. 786, 42 S. Ct. 313, writ of error dismissed);
West v. City of Asbury, 89 N. J. Law 402; 99 Atl. 190;
Hughes v. City of Detroit (1922), 217 Mich. 567, 187 N. W. 530;
Miller v. City of Niagara Falls (1924), 202 N. Y. Supp. 594, 207 App. Div. 798.

E. A fact that may not be without some significance is, that in many cases in which the constitutionality of legislation similar to that here involved has been drawn into question, the claim that such legislation impairs the obligation of contract has frequently been made, and likewise the claim that it denies due process of law, but seldom the claim that it denies the equal protection of the law.

Cases like *State v. Loomis* (1893), 115 Mo. 307, 22 S. W. 350, 21 L. R. A. 789, and *Vanzant v. Waddel* (1829), 10 Tenn. (2 Yerg.) 259, in which emergency legislation is not involved or in which the police power receives little or no consideration, have little force in connection with the question whether Chapter 389, Laws of 1933 of Minnesota, is class legislation, denying to any person or persons the equal protection of the laws.

F. The legislature is the first judge of whether a classification is reasonable. The legislature has a wide discretion in the matter of classification.

Lindsley v. Natural Carbonic Gas. Co., supra, (220 U. S. 61, 78);

Recent case: *State v. Darling* (Iowa), 246 N. W. 390.

It would seem, also, that where the legislature is striving to meet an emergency, the bounds of its discretion enlarge; the greater the emergency, the wider the discretion.

It has even been said that special legislation is permissible when "designed to meet a temporary emergency in a particular locality or in regard to a particular person, * * *."

Platt v. Craig (1902), 66 Ohio St. 75, 63 N. E. 594, 596.

ARGUMENT.

I.

The statute, because of the degree to which and the manner in which it subserves the general welfare in a time of emergency, springs from a constitutional exercise of the police power.

A. General (public, common) welfare embraces every matter which, with respect to any interest, whatever it may be (e. g., any social, political or economic interest), involves the welfare of all who constitute a given community (e. g., a city, a State, the United States).

The terms "general welfare," "public welfare" and "common welfare" are synonymous.

Stockton v. Williams (Mich., 1845), 1 Doug. 546, 570;
Kirkendall v. Omaha (1894), 39 Neb. 1, 57 N. W. 752, 754;
Spokane Traction Co. v. Granath (1906), 42 Wash. 506, 85 Pac. 261, 264;
Aymette v. State (1840), 2 Humph. (21 Tenn.) 154, 158.

The term "general welfare," with regard to the number and diversity of the matters it may concern, is a term of the broadest import.

Standard Oil Co. v. City of Bowling Green (1932), 244 Ky. 362, 50 S. W. (2d) 960, 961.

> "The public welfare embraces a variety of interests calling for public care and control. These are: 'The primary social interests of safety, order and morals; economic interests; and non-material and political interests. Freund Police Power, secs. 9, 15'."

State v. Hutchinson Ice Cream Co. (1914), 168 Iowa 1, 10, 147 N. W. 195, 199, L. R. A. 1917 B, 1918.

"As our civic life has developed, so has the definition of 'public welfare,' until it has been held to embrace regulations to promote the economic welfare, public convenience and general prosperity of the community."

Miller v. Board of Public Works (1925), 195 Cal. 477, 234 Pac. 381, 38 A. L. R. 1479;
Pettis v. Alpha Alpha Chapter (1927), 115 Neb. 525, 213 N. W. 835, 838.

Not only is the term of broad import with regard to the number and diversity of the matters it may concern, including economic interest or welfare, but also with regard to the number of individuals and classes it concerns. It connotes the antithesis of the special or private interest of an individual or class.

See *Steele-Smith Dry Goods Co. v. Birmingham Ry., Light & Power Co.* (1916), 15 Ala. App. 271, 73 So. 215, 216.

And see: *Platt v. Craig* (1902), 66 Ohio 75, 63 N. E. 594, 595.

"Mr. Webster says that 'in *general, public* expresses something common to mankind at large, to a nation, state, city or town, and is opposed to PRIVATE, which denotes what belongs to an individual, to a family, to a company, or a corporation'."

Chamberlain v. City of Burlington (1865), 19 Iowa 395, 403.

"The Century Dictionary defines it [public] as: 'Of or belonging to the people at large; relating to or affecting the whole people of a state, nation or community; not limited or restricted to any particular class of the community.' The New International defines it as: 'Of or pertaining to the people; relating to or affecting a nation, state or community at large'."

Cawker v. Meyer (1911), 147 Wis. 320, 133 N. W. 157, 159, 37 L. R. A. N. S. 510.

At least in certain connections, a distinction has been taken between "general" and "universal."

Koen v. State (1892), 35 Neb. 676, 63 N. W. 595, 596, 17 L. R. A. 821;
Puget Sound Pub. Co. v. Times Printing Co. (1903), 33 Wash. 551, 74 Pac. 802, 805;
Brooklyn Church Society v. Brooklyn Free Kindergarten Society, 152 N. Y. Supp. 41, 43;
New Standard Dictionary, p. 1018, defining "general" as an adjective.

If the distinction between "general" and "universal" be good in connection with the term "general welfare," possibly the general welfare is less than the welfare of all the members of a community; possibly such welfare is but that of many or the greatest number—merely a welfare extensive or widespread.

In a sense, however, general (public, common) welfare is in any view of the matter the welfare of all. That which is directly for the welfare of many may bring welfare indirectly to all others, so that, in the ultimate, the welfare of all is promoted. Individuals and classes find their greatest *ultimate* welfare in the welfare of all.

> "Judge Dillon, in his work on Municipal Corporations, (volume 1, p. 212), says * * * 'If one suffers injury, it is either *damnum absque injuria*, or in the theory of the law, he is compensated for it by sharing in the general benefits which the regulations are intended and calculated to secure'."

Village of Carthage v. Frederick (1890), 122 N. Y. 268, 25 N. E. 480, 481.

And see *Chicago, Burlington & Quincy Ry. Co. v. People* (1906), 200 U. S. 561, 593, 26 S. Ct. 341, 56 L. Ed. 596.

So, even if the recipients of the *direct* benefit of an act be a class, if the object of the act is to benefit, not the class, but

the public at large (individuals and classes generally), the object is general welfare. If an act confers a direct benefit upon debtors as a class or upon a certain class of debtors, not for the sake of the debtors but for the sake of the public, the act is an act to promote the general welfare. There is a decided difference between legislation which has for its sole object the benefit of a class and legislation which benefits a class with a view to achieving the ultimate benefit of the public—between class benefit as an end in itself and class benefit as a means to a public end.

B. The supreme aim of the federal constitution is the general welfare of the people of the United States.

It would seem that any political act, from the ordination of a constitution down to the enactment of a municipal ordinance, should have as its object the welfare of the community to be affected by it—the general welfare of the nation, the general welfare of a State of the United States, the general welfare of county or township, city or village.

That the general welfare of the people of the United States is the object of the Constitution of the United States is attested by the constitution itself. The preamble to the constitution is as follows: "We the people of the United States, in order to form a more perfect Union, establish Justice, insure domestic tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America." Promotion of the general welfare is the most general purpose stated in the preamble. Indeed, the purpose is so general that all the other purposes stated in the preamble can be placed under the one head, promotion of the general welfare. It is easy to see that the preamble would contain no more than it does, in substance and effect, if it were simply this: "We the people of the United States, in order to pro-

mote the general welfare, do ordain and establish this Constitution for the United States of America."

The inclusion, in the preamble, of a general welfare clause, indicates that by and under the constitution the general welfare is to be promoted, not only in the several certain ways (instance establishing justice and insuring domestic tranquility) mentioned in the preamble, but in other ways as well.

It stands to reason that the general welfare is the primary object of the constitution, because the general welfare is the primary object of all positive law. It is simply a matter of public policy that we have law at all, and what reason of public policy there could be, for our having law, unless the reason be that the public welfare can be promoted through law, it is impossible to perceive.

Even the socalled "private acts" of legislatures are not without a measure of public importance, not without a relation, however tenuous and remote, to the general welfare. Were it not so, what possible excuse could there be for them, in a country whose government is supposed to proceed, in fact as well as theory, from the people, and to be *for* the people.

The difference between a private act and a public act, in point of service to the general welfare, is one of degree, as is likwise the difference between one public act and another, and if a given public act be specifically denominated an act for the public welfare, such act is so denominated merely because it is more obviously and immediately in the interest of that welfare than are most other public acts.

Even when on its face an act is in aid of an individual only, and is actually denominated a *private* act, it has—in order to be justified it *must* have—some certain, even though relatively remote, public significance. Where, in point of public significance, is the dividing line between an act for

the relief of John Doe and an act for the relief of a great mass of people? Perhaps no one can trace the line with precision. However, it suffices, for practical purposes, that we can sense the difference between the private and the public act. The latter is certainly *more* for the public welfare than is the former. And just as there is a difference of degree between the private and the public act, so there is a difference of degree between one public act and another, in point of the promotion of the public welfare.

In the prevailing opinion in *Pennsylvania Coal Co. v. Mahon,* 260 U. S. 393, 413, 43 S. Ct. 158, 67 L. Ed. 322, we find the following passage:

> This is the case of a single private house. No doubt there is a public interest even in this, as there is in every purchase and sale and in all that happens within the commonwealth. Some existing rights may be modified even in such a case. *Rideout v. Knox,* 148 Mass. 368. But usually in ordinary affairs the public interest does not warrant much of this kind of interference. A source of damage to such a house is not a public nuisance even if similar damage is inflicted on others in different places. The damage is not common or public. *Wesson v. Washburn Iron Co.,* 13 Allen, 95, 103."

That "usually in ordinary affairs the public interest does not warrant much of this kind of interference" can never be gainsaid. In *Pennsylvania Coal Co. v. Mahon,* the court divided over whether considerations of general welfare warranted the statute involved in that case. The majority of the court did not think so; Mr. Justice Brandeis did. He thought the statute necessary to protect the public from detriment and danger—that is to say, to promote the general welfare. In view of the public detriment and danger involved in the present real estate mortgage situation, the statute under consideration in the case at bar is not the outgrowth of any of those "ordinary affairs" alluded to in

Pennsylvania Coal Co. v. Mahon. It is the outgrowth of affairs warranting some of "this kind of interference." It is not to be numbered among ordinary public acts. It is in such degree in the interest of public welfare that, although all laws are in theory for that welfare, this particular statute should be specifically denominated a public-welfare statute. It is not only in theory for the public welfare, but is especially so in fact.

The preamble plays no part in the construction of the framework of the federal government, nor does the preamble play any part—at least, it plays no direct part—in endowing any branch of the federal government with any of the powers possessed by that particular branch. However, the preamble can not be taken as an indulgence in beautiful but idle phraseology. It points to the purpose and object, basic and supreme, of the federal organic law—the general welfare of the people of the United States. Of this people the people of every State are a part; this welfare the welfare of the people of every State affects. And a constitution, as said in *Commonwealth v. City of Newport News* (Va., 1932), 164 S. E. 689, 696, must be construed "in the light of the purposes for which it was ordained"—the general, public, or common welfare.

C. When by a legislative act which contravenes the letter of a constitution the general welfare can be better promoted than by a strict observance of that letter, the act must prevail, else the constitution is a self-defeating instrument, and the organic law fails of the supreme object for which it was ordained.

To concede that the statute impairs the obligation of contracts would not be to concede that it violates Section 10 of Article I of the Constitution of the United States: "No state shall * * * pass any * * * law impairing the obligation of contracts * * * ."

To concede that the statute calls for any procedure such as does not constitute due process of law, would not be to concede that it violates Section I of the Fourteenth Amendment to the Constitution of the United States: "* * * nor shall any State deprive any person of * * * property, without due process of law * * *."

To concede that the statute withholds from any one the equal protection of the laws would not be to concede that it violates Section 1 of the Fourteenth Amendment to the Constitution of the United States: "nor shall any State * * * deny to any person within its jurisdiction the equal protection of the laws."

It is erroneous to assume that any legislative act which impairs the obligation of contracts or trenches upon due process or savors of class legislation is a violation of the organic law. Whether such act is violative of one or more of the clauses above quoted depends, fundamentally, upon how the clauses are to be regarded and applied. Shall they be interpreted strictly—interpreted according to their very letter? Or shall they be construed liberally—construed in the light of the needs of society and the general purpose and object of a constitution? Shall they be strictly applied, without regard to whether adherence to their letter helps or hinders general welfare? Or liberally, with an eye to promoting that welfare?

If all the clauses of a constitution are always to be taken literally and applied strictly, no legislative act which is in *literal* conflict with any of them can by any possibility be constitutional. If, however, the clauses receive *liberal* construction and application, the question whether a given legislative act contravenes one or more of them must depend upon the degree to which the act will serve the purpose and object of the constitution. If the clause is to be construed according to the *spirit* of the constitution as a whole,

and so applied as always to further, never defeat, the basic and ultimate object of the organic law, certain legislative acts may impair the obligation of contracts or deprive a person of property without due process of law or deny to one the equal protection of the laws, and yet not contravene the constitution. In other words, some impairments of the obligation of contracts may be constitutional, others not. And so as to denials of due process or withholdings of equal protection.

In this brief such expressions as "repugnant to," "violative of," "in violation of," "in contravention to," "violates," "contravenes," and all similar expressions, with reference to the relation between a legislative act and the organic law or any particular provision thereof connotes more than a mere literal conflict between them, and it is respectfully submitted that often in judicial opinions and the statements of textwriters such expressions are intended and should be taken to mean a conflict between the legislative act and the spirit and fundamental purpose of the constitution or some one or more of its clauses.

Whenever any clause of the constitution, taken literally, stands in the way of the general welfare, the general welfare must be deemed above, and constitutionally above, the letter of the clause.

> "A recent writer upon the Limitations of Police Power says that 'where the letter of the constitution would prohibit police regulations, which, by all the principals of constitutional government, have been recognized as beneficent and permissible restrictions upon the individual liberty of action, such regulations will be upheld by the courts, on the ground that the framers of the constitution could not possibly have intended to deprive the government of so salutary a power; and hence the spirit of the constitution permits such legislation, although a strict construction of the letter may prohibit.' Tild. Lim. 12."

Village of Carthage v. Frederick (1890), 122 N. Y. 268, 25 N. E. 480, 481.

It may be said with regard to the contract clause, the due process clause and the equal protection clause, as is said, with regard to a certain clause in *Packet Co. v. Keokuk* (1877), 95 U. S. 80, 87, 24 L. Ed. 377: "A mere adherence to the letter, without reference to the spirit and purpose, may in this case mislead, as it has mislead in other cases."

D. The police power, like the constitution, has for its object the promotion of general welfare.

> "It may be said in a general way that the police power extends to all the great public needs. *Canfield v. United States*, 167 U. S. 518. It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality and preponderant opinion to be greatly and immediately necessary to the public welfare."
>
> *Noble State Bank v. Haskell* (1910), 219 U. S. 104, 111, 31 S. Ct. 186, 55 L. Ed. 112, 32 L. R. A. N. S. 1062, Ann. Cas. 1912 A, 487.

Everything that has ever been stated as a proper object of the exercise of the power can be ranged under the head of general welfare. The public peace, the public order, the public safety, the public health, the public morals, to mention only a few but perhaps the most usual objects of the exercise of the power—these all range under the head of general welfare. They range under it as certainly as, from the national point of view, do the formation of a more perfect union, the establishment of justice, the insurance of domestic tranquility, the provision for the common (general, public) defense, and the securing, to ourselves and our posterity, of the blessings of liberty. Indeed, the object of any law, organic or nonorganic, state or federal, must be something that ranges under the general-welfare head.

The term "general welfare" or its equivalent occurs in numerous definitions and characterizations of the police power, and in such manner as to make clear that the promotion of that welfare is the essential office of the power, and the foundation of every exercise thereof.

12 C. J., Constitutional Law, sec. 430.

And see:

Miller v. Board of Public Works (1925), 195 Cal. 477, 234 Pac. 381, 383, 38 A. L. R. 1479;

Pettis v. Alpha Alpha Chapter (1927), 115 Neb. 525, 213 N. W. 835, 838;

State v. Bassett (1924), 100 Conn. 430, 123 Atl. 842, 37 A. L. R. 131 (United States Supreme Court cases cited).

And the following recent cases:

Graham v. Kingwell (Cal.), 24 Pac. (2d) 488;

People v. Coulides, 265 N. Y. Supp. 765, citing *Baker v. Walker*, 204 U. S. 311, 27 S. Ct. 289, 51 L. Ed. 499.

The police power has even been said to be "the law of overruling necessity, for the preservation of the general welfare."

Cook County v. Chicago (1924), 311 Ill. 324, 142 N. E. 512, 516, 31 A. L. R. 442.

E. If the object of all law, organic or nonorganic, and the object of the police power, as exercised in the making of law, be upon ultimate analysis the general welfare, where within the bounds of law—where within the scope of general welfare—lie the boundaries of the police power?

If the police power could be defined with precision, the question could be readily answered. Definitions point to boundaries, boundaries point to definitions.

The difficulty of defining the police power or perceiving its boundaries has been frequently recognized.

6 R. C. L., Constitutional Law, sec. 183.

It is respectfully submitted that much of the difficulty in defining the police power lies in the fact that "police power," like many other terms, has different meanings in different connections.

In its broadest sense the term means, perhaps, sovereign power itself, the source of all positive law, including the organic.

6 R. C. L., Constitutional Law, sec. 184;
12 C. J., Constitutional Law, sec. 415;
Citizens' Ins. Co. v. Hebert (1916), 139 La. 708, 717, 71 So. 955, 958.

In a narrower sense, the police power seems to be the power to meet the *great* public needs, whether such needs as have been immemorially regarded as great (instance those relative to such matters as public health and public morals) or yet others, not immemorially regarded as great, but by times and conditions, according to the preponderant opinion of what is required and the prevailing opinion of what is right, raised to the rank of those things "greatly and immediately necessary to the public good." See *Noble State Bank v. Haskell, supra* (219 U. S. 104, 111). In the narrower sense, police power is but sovereign power in a certain one of its aspects. We have already had occasion (see I B, this Argument) to point out that private acts differ from public acts in degree only, in point of serving the public welfare, and that public acts differ from one another in the same manner. Some serve that welfare in much greater degree than do others.

If certain characterizations of the police power do not serve to make it synonymous with sovereign power, they at least go to the verge of doing so, and make out that the exercise of the police power is a manifestation, at any rate, of sovereign power. Thus, in *Chicago, Burlington & Quincy Ry. Co. v. People* (1905), 200 U. S. 561, 588, 26 S. Ct. 341, 56

L. Ed. 596, we read that the police power is "'incident to and a part of government itself.'" In *Miller v. Board of Public Works* (1925), 195 Cal. 477, 234 Pac. 381, 3 A. L. R. 1479, we read that the police power is "an indispensable prerogative of sovereignty, and not lightly to be limited." "The police powers of a state * * * 'are nothing more or less than the powers of government inherent in every sovereignty to the extent of its dominions.'" *McKeon v. Railway Co.* (1902), 75 Conn. 347, 53 Atl. 656, 657, 61 L. R. A. 730, quoting from *The License Cases*, 5 How. (46 U. S.) 504, 583, 12 L. Ed. 256.

And see:

State v. Bassett (1924), 100 Conn. 430, 123 Atl. 842, 843, 37 A. L. R. 131;

City of Chicago v. Washingtonian Home (1919), 289 Ill. 206, 124 N. E. 416, 419.

Regarded as a power exercised for the great needs of general welfare, the police power is nevertheless, of course, a part of sovereign power. It is merely a matter of terminology, whether we shall give the name "police power" to sovereign power as a whole or to sovereign power as we see it manifest itself or capable of manifesting itself under certain circumstances and to certain ends. In strictness, the police power is no more to be separated from the one and only supreme political power in a state than reason, will or emotion is to be separated from mind and made a mind unto itself. "Police power," then, in the narrow sense of the term (that is to say, the sense in which we usually employ the term) is a name for sovereign power as it may or actually does manifest itself in behalf of great public needs; it is sovereign power in a certain aspect of that power—sovereign power as capable of acting or as actually acting for certain highly important objects of general welfare.

It might seem as if, in a yet narrower sense, the police

power is the specific power to override, in certain instances, the letter of the constitution, in pursuit of the welfare of the people. Perhaps this is the sense in which it is spoken of as a "reserve element of sovereignty." See *Des Moines v. Manhattan Oil Co.*, 193 Iowa 1096, 184 N. W. 823, 23 A. L. R. 1322. The police power, however, is not merely the specific power of contravening the letter of the organic law, but a power which on occasion manifests itself in that specific way. We are easily tempted to define the power in the light of the fact that it may override the letter of the constitution. Seldom, except when the exercise of the power is contrary to that letter, do we bother to name the power or pause to consider whether it is exercised constitutionally. Usually, if the use of the power does not contravene the letter of the organic law, an exercise of the power elicits no particular attention; no one troubles to classify the power; no one troubles to give it a name.

When a statute is enacted to accomplish something "greatly and immediately necessary to the public good," and the statute runs counter to the phraseology of a provision of the constitution, is the statute repugnant to the constitution because repugnant to its letter? The answer is, the statute must be repugnant to the spirit as well as to the letter of the provision in order to be repugnant to the constitution. If, in a given situation, a statute which is necessary to the welfare of all is in *literal* conflict with a given clause of the constitution, the statute is not, in spirit and reality, repugnant to the organic law, and therefore unconstitutional, but in line with that law because in line with its ultimate purpose, and therefore constitutional. This view shows the true significance of "repugnant" in the description of the police power as "the power vested in the legislature by the constitution to make, ordain and establish all manner of wholesome and reasonable laws, statutes

and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the Commonwealth, and of the subjects of the same."

Shaw, C. J., in *Commonwealth v. Algers* (1851), 7 Cush (61 Mass.) 53, 85.

It is submitted that in certain definitions and characterizations of the police power, statements that it must be exercised subject to the constitution, or in a manner not repugnant to, or violative of, the constitution, have reference to the spirit and intent of the provisions of the organic law, rather than to their letter. Certainly if to suppress a public nuisance it is necessary to impair the obligation of contracts, deprive of due process, or deny equal protection, the *letter* of the constitution is infringed. Whoever maintains that the letter can be infringed in the interests of general welfare in the case of a public nuisance, will find himself in a dilemma if he tries to explain why the general welfare and not the letter of the constitution is not always the test of whether the police power is constitutionally exercised. To find a statute unconstitutional, we have to find, first, that it violates the letter of the organic law, and, second, that adherence to that letter is more for the general welfare than is the statute.

A term which in one sense denotes the whole and in another a part and perhaps in yet another a part of the part, is doomed to inadequacy and uncertainty of definition. But it is respectfully submitted that some such definition as the following points to the basis, nature and scope of the power: It is the sovereign power acting or seen in point of its capacity to act to terminate any existent or obviate any threatened detriment or danger to the general welfare of the community, whether such sovereign power be inherent in or

delegated to the people of that community, and whether or not in the exercise of that power, when to use it is greatly and immediately necessary to the public good, it contravenes the letter of the organic law.

Thus it is that the police power is "society's natural right of self-defense."

McGuire v. Chicago, Burlington & Quincy Rd. Co. (1906), 131 Iowa 340, 354, 108 N. W. 902, 907.

And see:

12 C. J., Constitutional Law, sec. 415, and f. n. 13;
Barret v. Rickard (1910), 76 Neb. 769, 124 N. W. 153, 155-6;
Pettis v. Alpha Alpha Chapter (1927), 115 Neb. 525, 213 N. W. 835, 838.

F. What we may term a balance-of-welfare theory of the relation between the police power and the letter of the constitution is evidently in process of evolution.

Since the organic law and the police power have as a common object the promotion of the general welfare, they must and do work hand in hand. The constitution cannot stand in the way of the fulfillment of the common object by the police power, any more than the police power can stand in the way of the fulfillment of that object by the constitution. Either the police power or the constitution, in preventing the fulfillment of the common object, would, needless to say, defeat the fulfillment of its own.

The boundaries of the police power are being gradually ascertained through the process of exclusion and inclusion.

6 R. C. L., Constitutional Law, sec. 185.

"With regard to the police power, as elsewhere in the law, lines are pricked out by the general approach and contact of decisions on the opposing sides."

Noble State Bank v. Haskell, supra, 219 U. S. 104, 111.

It is submitted that the decisions substantiate the following observations concerning the line between the constitutional and the unconstitutional exercise of the police power: 1. On one side of the line range those exercises of the police power which either do not contravene the letter of the constitution or, being contrary to the letter, tend more to promote the general welfare and fulfill the spirit of the constitution than would strict adherence to its letter. 2. On the other side of the line range such exercises of the police power as not only are contrary to the letter of the constitution but tend less than would adherence to its letter to fulfill its spirit and promote the common weal.

If the foregoing observations are correct, there is truth in what we may term a balance-of-welfare doctrine with respect to the question whether the police power or the letter of the constitution shall prevail in any given situation in which, on the one hand, it is assumed to assert the police power, and, on the other, to challenge the exercise of the power on the ground that such exercise contravenes some one or more of the prohibitions of the organic law. Thus the true constitutional limitation on the exercise of the police power is at the line at which the exercise of the power becomes less promotive of the general welfare than is a strict adherence to the letter of the organic law.

If the object of organic law be the general welfare, and the general welfare be likewise the object of the police power, the point whether adherence to or departure from the letter of the constitution is the more for the public welfare, must be the fulcrum on which pivot the scales in which legislative bodies must weigh their duties to the people, and in which courts must weigh the power of legislatures. Legislation is unconstitutional only when, in those scales, it weighs less than the letter of the constitution.

It has been judicially recognized that if legislation is in

conflict with the letter of the constitution, the criterions by which the constitutionality or unconstitutionality of the legislation shall be adjudged involve the *degree* to which it promotes the general welfare.

Pennsylvania Coal Co. v. Mahon, supra, (260 U. S. 393, 416).

G. A state may balance its police power against the letter of the federal constitution.

The truth of the statement is so implicit in so many of the decisions, state and federal, cited in this brief, that it seems almost superfluous to fortify the proposition with particular statements and citations.

The contract clause of the federal constitution does not inhibit a state from impairing the obligation of contracts when exercising its police power with a view to attaining a great and immediate good.

See Burdick, The Law of the American Constitution, secs. 196 and 197.

Nor does the Fourteenth Amendment place a limitation upon the subjects over which a state may exercise the power.

See 2 Cooley, Constitutional Limitations (8th ed.), 1234, f. n.

Police power belongs inherently to each of the states.

12 C. J., Constitutional Law, sec. 417;
2 Cooley, Constitutional Limitations (8th ed.), p. 1232.

Except possibly within a field which the people of the United States, as distinguished from the people of one of the states, may occupy exclusively, the federal constitution has not deprived the states of their police power.

Brown v. Maryland (1827), 12 Wheat. (25 U. S.) 419, 443;

Boston Beer Co. v. Massachusetts (1877), 97 U. S. 25, 33, 24 L. Ed. 989;
Reeves v. Corning (1892), 51 Fed. 774, 785;
State v. Schlenker (1900), 112 Iowa 642, bot. 649, 84 N. W. 698, 699, 51 L. R. A. 347, 84 Am. St. Rep. 360;
State v. Fitzpatrick (1888), 16 R. I. 54, 11 Atl. 767, 769;
City of Rochester v. West (1898), 29 App. Div. 125, 51 N. Y. Supp. 482, 484;
City of Westport v. Mulholland (1900), 159 Mo. 86, 60 S. W. 77, 78, 53 L. R. A. 442.

H. Whether given legislation promotes the general welfare at all, and if so, the *degree* to which the legislation promotes the general welfare, may depend upon times and conditions.

As has in effect been pointed out, such matters as the public peace, order, safety, health and morals are at all times to be weighed against the letter of the constitution. Even with respect to these matters, undoubtedly certain measures which at certain times and under certain conditions are not justified by considerations of general welfare and are unconstitutional, may so far promote that welfare at certain other times and under certain other conditions as to be constitutional. The statute now under consideration is not unconnected with certain of these matters, in particular peace and order, because of conditions now obtaining.

Such economic measures as the letter of the constitution would kill at one time may at another time kill the letter of the constitution.

No one will dispute that at most times and under most conditions most measures in contravention of the letter of the contract clause, the due process clause or the equal protection clause are as contrary to the spirit of the constitution as to its letter. But conditions may so change, even over night, as to present an occasion on which measures de-

signed to serve the general welfare in the particular instance may serve it so well as to outweigh all other considerations, and thus a measure that would have been contrary to the public interest yesterday may today be imbued with a public interest of the most vital sort. Such a measure is the statute considered in the case at bar.

> "Plainly circumstances may so change in time or so differ in space as to clothe with such an interest what at other times or in other places would be a matter of purely private concern. It is enough to refer to the decisions as to insurance, in *German Alliance Insurance Co. v. Lewis*, 233 U. S. 389; irrigation, in *Clark v. Nash*, 198 U. S. 361; and mining, in *Strickley v. Highland Boy Gold Mining Co.*, 200 U. S. 527. They sufficiently illustrate what hardly would be denied. They illustrate also that the use by the public generally of each specific thing affected cannot be made the test of public interest, *Mt. Vernon-Woodberry Cotton Duck Co. v. Alabama Interstate Power Co.*, 240 U. S. 30, 32, and that the public interest may extend to the use of land. They dispel the notion that what in its immediate aspect may be only a private transaction may not be raised by its class or character to a public affair. See also *Noble State Bank v. Haskell*, 219 U. S. 104, 110, 111."

Block v. Hirsch (1921), 256 U. S. 135, 155, 41 S. Ct. 458, 65 L. Ed. 865, 16 A. L. R. 165.

A matter which in general is private may in a particular situation become public.

Edgar A. Levy Leasing Co. v. Siegel (1922), 258 U. S. 242, 246, 42 S. Ct. 289, 66 L. Ed. 595.

> "The police power of the state, never having been exactly defined or circumscribed by fixed limits, is considered as being capable of development and modification within certain limits, so that the powers of governmental control may be adequate to meet changing social, economic, and political conditions. It is very broad and comprehensive, and is liberally understood and applied.

The changing conditions of society may make it imperative for the state to exercise additional powers, and the welfare of society may demand that the state should assume such power."

6 R. C. L., Constitutional Law, sec. 188, citing ample authority.

"* * *. The instrument was not intended to provide merely for the exigencies of a few years, but was to endure through a long lapse of ages, the events of which were locked up in the inscrutable purposes of Providence. It could not be foreseen what new changes and modifications of power might be indispensable to effectuate the general objects of the charter, and restrictions and specifications which at the present might seem salutary might in the end prove the overthrow of the system itself. Hence its powers are expressed in general terms, leaving to the legislature from time to time to adopt its own means to effectuate legitimate objects and to mold and model the exercise of its powers as its own wisdom and the public interest should require."

"The police power, as such, is not confined within the narrow circumscription of precedents, resting upon past conditions which do not cover and control present-day conditions obviously calling for revised regulations to promote the health, safety, morals, or general welfare of the public; that is to say, as a commonwealth develops politically, economically and socially, the police power likewise develops, within reason, to meet the changed and changing conditions. What was at one time regarded as an improper exercise of the police power may now, because of changed living conditions, be recognized as a legitimate exercise of that power."

Miller v. Board of Public Works (1925), 195 Cal. 477, 234 Pac. 381, 383, 38 A. L. R. 1479;
Pettis v. Alpha Alpha Chapter (1927), 115 Neb. 545, 213 N. W. 835, 838.

And see *City of Aurora v. Burns*, 319 Ill. 84, 149 N. E. 784, 788.

"What was a reasonable exercise in the days of our fathers may today seem so utterly unreasonable as to make it difficult for us to comprehend the existence of conditions that would justify same; what would by our fathers have been rejected as unthinkable is today accepted as a most proper and reasonable exercise thereof."

Streich v. Board of Education (1914), 34 S. D. 169, 147 N. W. 779, 781, Ann. Cas. 1917 A, 760;
Miller v. Board of Public Works (1925), 195 Cal. 477, 234 Pac. 381, 383, 28 A. L. R. 1479.

"Doubtless the statute before us would be condemned by an earlier generation as a temerarious interference with the rights of property and contract * * *. But we must not fail to consider that the police power is the least limitable of the powers of government and that it extends to all the great public needs; that constitutional law is a progressive science; that statutes aiming to establish a standard of social justice, to conform the law to the accepted standards of the community, to stimulate the production of a vital food product by fixing living standards or price for the producer, are to be interpreted with that degree of liberality which is essential to the attainment of the end in view (*Austin v. City of New York, supra*, page 117 of 258 N. Y., 179 N. E. 313); and that mere novelty is no objection to legislation (*People ex rel. Durham Realty Corp. v. La Fetra*, 230 N. Y. 429, 130 N. E. 601, 16 A. L. R. 152)."

People v. Nebbia (1933), 262 N. Y. 259, 186 N. E. 694, 699.

I. An economic depression, as well as a war, may constitute or comprise an emergency such as warrants an unusual exercise of the police power. In no case so far decided has it been said that war provides the sole occasion for such legislative overriding of the letter of the constitution as would not be permissible in ordinary times and under normal circumstances. On the contrary, the same reasoning that jus-

tifies certain legislation in wartime, and harmonizes with the constitution certain exercises of the police power in wartime emergency, justifies certain legislation in peacetime, and harmonizes with the constitution certain exercises of the police power in peacetime emergency. In peacetime as in wartime, the point on which turns the conflict between the police power and the letter of the organic law, is the matter of general welfare. No better evidence of this exists than the fact that public peace, order, safety, health and morals can *always* be furthered at the expense of the letter of the constitution, but certain other things can be furthered at that expense only when an emergency of some sort raises them, for the time being, to the plane that matters of public peace, order, safety, health and morals occupy in peace or war, and in times of economic depression as well as in times of prosperity.

Various definitions of the police power embrace such terms as "prosperity," "economic welfare," "economic concern," etc., etc.; thus evincing that the police power may be used to further the general welfare along economic lines, and indicating, also, that an economic emergency may be a proper occasion for exercising the power in ways in which it might not, ordinarily, be constitutionally exercised. And see:

Bankers' Trust Co. v. Russell (Mich.), 249 N. W. 27, 29 (United States Supreme Court decisions cited).

We have already pointed out that numerous definitions of the police power embrace the term "general welfare" (I D, this Argument) and that general welfare, according to judicial definitions thereof, embraces the primary social interest of *economic* welfare (I A, this Argument, citing cases here again cited).

State v. Hutchinson Ice Cream Co. (1914), 168 Iowa 1, 10, 147 N. W. 195, 199, L. R. A. 1917 B, 1918;

Pettis v. Alpha Alpha Chapter (1927), 115 Neb. 525, 213 N. W. 835, 838.

It has not infrequently been said that one of the purposes of the police power is, "to insure in any respect such economic conditions as an advancing civilization of a highly complex character requires."

Stetter v. O'Hare (1914), 69 Orl. 519, 531, 139 Pac. 743, 747, Ann. Cas. 1916 A, 217, 222;
Ex parte Townsend (1911), 64 Tex. Cr. 350, 144 S. W. 628, 631, 33 Ann. Cas. 1914 C, 814, 817;
State v. Mamlock (1910), 58 Wash. 631, 633, 109 Pac. 47, 137 Am. St. Rep. 1085;
Morrison v. State (1906), 116 Tenn. 534, 543, 95 S. W. 494, 496.

A power that may be exercised to promote prosperity may certainly be exercised to deal with depression. Therefore it is important to note that not infrequently the promotion of public prosperity has been said to be a function of the power.

"We hold that the police power of a State embraces regulations designed to promote the public convenience or the general prosperity, as well as regulations designed to promote the public health, the public morals or the public safety. *Lake Shore & Mich. South. Ry. Co. v. Ohio*, 173 U. S. 285, 292; *Gilman v. Philadelphia*, 3 Wall 713, 729; *Pound v. Turck*, 95 U. S. 459, 464; *Railroad Co. v. Haven*, 95 U. S. 470."

Chicago, Burlington & Quincy Ry. Co. v. People, supra (200 U. S. 561, 592).

It is a power under which "persons and property are subjected to all kinds of restraints and burdens, in order to secure the general comfort, health, and prosperity of the State; of the perfect right in the legislature to do which, no question ever was, or, upon acknowledged general principles, ever can be made, * * *."

Thorpe v. Rutland & Burlington Rd. Co. (1854), 27 Vt. 140, 149, 62 Am. Dec. 625, 633;
Village of Carthage v. Frederick (1890), 122 N. Y. 268, 25 N. E. 480, 482.

"Whatever may be the limits by which the earlier decisions circumscribed the (police) power, it has in more recent decisions been defined to include all those regulations designed to promote the public convenience, the general welfare, the general prosperity, and extends to all great public needs, as well as regulations designed to promote the public health, the public morals or the public safety."

State v. Pitney (1914), 79 Wash. 608, 140 Pac. 918, 919, Ann. Cas. 1916 A, 209.

See also:

Noble State Bank v. Haskell, supra, (219 U. S. 104, 111);
Bacon v. Walker, 204 U. S. 311, 318, 51 L. Ed. 499, 27 S. Ct. 291;
Barbier v. Connolly (1885), 113 U. S. 27, 31, 5 S. Ct. 357, 28 L. Ed. 923;
Women's Kansas City St. Andrew Society v. Kansas City (1932), 58 F (2d) 593, 599;
City of Des Moines v. Manhattan Oil Co. (1922), 193 Iowa 1096, bot. 1104, 184 N. W. 823, 23 A. L. R. 1322.

"Emergency laws in time of peace are uncommon but not unknown. Wholesale disaster, financial panic, the aftermath of war *(Hamilton v. Kentucky Distilleries & W. Co.,* 251 U. S. 146, 161, 40 S. Ct. 106, 64 L. Ed. 194), earthquake, pestilence, famine, and fire, a combination of men or the force of circumstances may, as the alternative of confusion or chaos, demand the enactment of laws that would be thought arbitrary under normal conditions *(Bowditch v. Boston,* 101 U. S. 16, 18, 19, 25 L. Ed. 980; *American Land Co. v. Zeiss,* 219 U. S. 47, 31 S. Ct. 200, 55 L. Ed. 82)."

People v. La Fetra (1921), 230 N. Y. 429, 130 N. E. 601, 606.

In no well considered modern case is it said, with reference to public (common, general) welfare, that the police power is for exercise with respect to such welfare in this connection but not in that, or that the letter of the constitution must yield to it in connection with this phase or aspect of such welfare but not in connection with that.

Although the land involved in the case at bar is not farm land, the importance of the statute to the people of the State of Minnesota can not be fully realized without bearing in mind that agriculture is one of the important industries of the state and that the prevailing economic distress involves a multitude of farm mortgages.

It can hardly be maintained that a power which in ordinary times and circumstances can be exercised in behalf of the health, morals, peace, order and safety of the people, and otherwise for their welfare in general, can not be exerted by them for their economic welfare in times when conditions are such that they render families homeless, take bread from the mouths of children, drive men, women and children into breadlines and in various ways throw large numbers of persons upon the bounty of public charity—times when conditions are such that they even create and fan the very sparks of insurrection itself.

The Court of Appeals of the State of New York, in *People v. Nebbia* (1933), 262 N. Y. 259, 186 N. E. 694, 698, noticed as a reason justifying a legislative enactment "scenes of violence and disorder in the attempt to organize so-called milk strikes as a protest against the low prices paid for milk."

It should hardly be necessary to argue that in times like these the power can be used to keep families in their homes, farmers on their farms. While farmers keep their land, they can at least keep themselves usefully employed and keep themselves and their families from becoming public charges. Whether A or B, as an individual, owns some particular

home or farm, is not the question, but what matters is the detriment and danger to *all* the citizens of the state through what has happened or may happen to *many* of its citizens.

J. The statute is not, and does not profess to be, a cure for the depression or any phase of the depression, but merely a means of ameliorating, during the economic emergency, a certain condition fraught with public detriment and danger.

It is to be noted, too, that the statute is a legislative exercise of a legislative power, and not in any sense or degree an abdication of such power.

K. During the past generation, with the concept of the police powers undergoing clarification, legislatures have more and more weighed this power against the letter of the organic law.

It is an irrefutable fact that "during the last generation the pendulum has swung."

Burdick, The Law of the American Constitution, secs. 196 and 197.

A detailed history of the swing of the pendulum may be found in 2 Warren, The Supreme Court in United States History, 735 et seq., esp. 740-742.

Although the power must always have been as great as it now is, the *concept* of the breadth of the power has grown as courts and legislatures have come to have a better understanding of the relation between the power and the organic law.

The police power can hardly be conceived of as something more potent at one time than at another (see *Brown v. Maryland*, 12 Wheat., 25 U. S., 419, 439), but as a power the application of which contracts or enlarges as the necessity for applying it grown or diminishes. So, in the following quotation, it would seem, the "growth of the police power" means merely the growth of the necessity for using the

power, and, consequently, of the bounds of the actual exercise or application of the power.

> "* * * the growth of the police power must from time to time conform to the growth of our social, industrial and commercial life. You cannot put a straight-jacket on justice any more than you can put a straight-jacket on business."

Leonard v. State (1919), 100 Ohio St. 456, 127 N. E. 464, 465.

We must without hesitation or a blush of apology dismiss the view that those who framed our constitution and those who voted to adopt it intended it to be a straight-jacket on progress or the public welfare.

> "The tendency of modern development is in the direction of greater, rather than more restricted use of police power, and necessarily so in order to meet the new dangers and increase of old dangers, constantly occurring as natural incidents of advancing civilization."

Chicago, Milwaukee & St. Paul Ry. Co. v. City of Milwaukee (1897), 97 Wis. 422, 72 N. W. 1118, 1123.

And see:

City of Westport v. Mulholland (1900), 159 Mo. 86, 60 S. W. 77, 78, 53 L. R. A. 442.

Although of late the use of the power has become more and more frequent and has extended over broader fields than it touched in the early days of the republic, it must not be thought that the power has not always existed, any more than it must be thought that the power itself has grown. Although the term "police power" found its way into the decisions in 1827, via *Brown v. Maryland,* 12 Wheat. (25 U. S.) 419, 443 (see 1 Warren, The Supreme Court in United States History, 605, f. n. 2), the *use* of the power in this country antedated the use of the term (see *Munn v. Illinois,* 94 U. S. 113, 125, 24 L. Ed. 77). Not only is it true that the yielding

of the letter of the constitution to its spirit is no new thing, but it is true, of a necessity, that the existence of the power antedated the very organic law with whose letter it sometimes conflicts. As said in *City of Rochester v. West* (1898), 51 N. Y. Supp. 482, 484, the power, generally speaking, "may be characterized as a power which inheres in the state, and in each political subdivision thereof. * * * It constituted an essential feature of some of the enactments of the Twelve Tables, and it has for ages been adopted and enforced by all civilized nations as a cardinal rule of the civil law." The fact that the relation between the police power and the constitution was not at first thoroughly grasped, and therefore not considered in many cases in which it might have been, is no argument against the existence and the scope of the power.

If the statutes involved in certain cases were the outgrowths of previous depressions, and were emergency acts, notwithstanding the fact that the decisions in question do not allude to those statutes as emergency measures or discuss the relation between the organic law and the police power, two observations are in order:

1. The force of those decisions as standing for a narrow construction of the constitution is weakened by their want of direct reference to any emergency and their lack of allusion to the police power.

2. Those decisions must yield to the authority of later cases, in which emergency statutes are considered as such and the relation indicated which subsists and must always have subsisted between the police power and the constitution.

As to *Munn v. Illinois, supra*, and cognate cases: It would stultify the principle enunciated therein to hold that it is applicable only where the regulation of rates or prices is concerned. The principle is obviously applicable not only

where rates or prices are regulated in connection with a business affected with a public interest, but where for any reason anything whatsoever is so far affected with such an interest as to make it reasonably necessary that it be taken under legislative control. The difference between regulating the use of property "clothed with a public interest" and extending for the public benefit the period in which redemption of land may be effected is not a difference in principle. It is not without reason if in a recent case, *People v. Nebbia*, 262 N. Y. 259, 186 N. E. 694, 698, the Court of Appeals of the State of New York, citing numerous decisions of the Supreme Court of the United States, relates to a single principle the exercise of the police power in a large number of cases varying greatly from one another in their facts. From the time (1820) when Congress empowered the city of Washington "to regulate * * * the rates of wharfage at private wharves, * * * the sweeping of chimneys, and to fix the rate of fees therefor, * * * and the weight and quality of bread," (see *Munn v. Illinois, supra*, 94 U. S. 113, 125) down to, through and past the time (1921) when it was held that Congress could regulate the amounts of rents and the tenures of lessees in that city (see *Block v. Hirsch, supra*, 256 U. S. 135), the principle has always been applicable, that, given a situation in which or occasion on which the public interest is so great as to call for legislation contravening the *letter* of the constitution, considerations of general welfare prevail over that letter—the legislation is *constitutional*.

II.

Certain matters which the courts judicially notice, certain presumptions with which they surround legislation, and the general attitude which judicial tribunals take toward legislation, all tend to support the act.

The relation between the organic law and the police power involves the principle that whether the letter of that law or the police power shall prevail depends upon considerations of general welfare. In the actual balancing of the letter against the power—the actual process of balancing considerations of public welfare—certain principles, presumption, etc., apply. They determine what part the court and what part the legislature takes in the process, and how each shall play its part.

A. The court is bound to take judicial notice of the fact that a grave economic emergency exists.

1. The courts judicially notice matters of common knowledge.

23 C. J., Evidence, sec. 1810.

The best evidence that an emergency exists is public recognition of the fact. The courts can not be without knowledge of that evidence. They know that people in all walks of life are continually discussing, and have for years been continually discussing, the economic depression; that newspapers and magazines have teemed, and teem now more than ever, with editorials and other articles concerning it; that books have been written about it; that sermons have been preached about it, and that innumerable other discourses have been pronounced concerning it; that there has been discussion without end as to its cause or causes, its numberless ramifications and effects, its composite character (its consisting of or producing countless emergencies that merge to make of it one vast emergency), the time and manner of its beginning, its probable duration and how it may end, as well as what its after effects may be, and the possibilities of curing or ameliorating it as a whole or in some one or more of its innumerable particulars.

That the depression has confronted the respective states

individually and the United States as a whole with countless and various detriments and dangers, is also a matter of common knowledge. It is even such knowledge, that the whole civilized world faces an emergency. Recently representatives of the principal nations assembled in London, to consider the economic problems of the world. The fact that there was such a conference, the fact that it found the problems overwhelming, the fact that it adjourned, temporarily at least, without having solved the problems, and the fact that most if not all of the detriments and dangers it sought to remove still beset the world—these facts are all matters of the most common of common knowledge.

It would seem to require no specific authority for the proposition that a court may judicially notice the existence of a public emergency. Yet such authority exists.

Block v. Hirsch, supra, 256 U. S. 135, 154;
Chastleton Corporation v. Sinclair (1924), 264 U. S. 543, 547, 68 L. Ed. 841, 44 S. Ct. 405.

In the latter case this court said it could judicially notice that an emergency has passed. It would be strange if a court could notice, judicially, that an emergency has passed, but could *not* notice, judicially, that an emergency has *not* passed. This court is bound to notice that the depression, as a whole an emergency, has *not* passed, and that the exigencies which it embraces or of which it is composed, among them the exigencies of the real estate mortgage situation, have *not* passed; moreover, that the real estate mortgage situation is not confined to any one state, but is of nation-wide scope, and has been and is the subject of national efforts for relief.

2. This court judicially notices the proclamations, and the contents thereof, of the President of the United States.

23 C. J., Evidence, sec. 1900.

Therefore this court knows that the President, in his proclamation of a bank holiday (proclamation of March 6, 1933), proclaimed the existence of an economic emergency of national scope.

3. This court judicially notices acts of Congress.

23 C. J., Evidence, sec. 1947.

"That the Congress hereby declares that the present economic depression has created a serious emergency, due to widespread unemployment and increasing inadequacy of State and local relief funds, resulting in the existing or threatened deprivations of a considerable number of families and individuals of the necessaries of life, and making it imperative that the Federal Government cooperate more effectively with the several States and Territories and the District of Columbia in furnishing relief to their needy and distressed people."

Federal Emergency Relief Act of 1933 (H. R. 4604, approved May 12, 1933); initial part of act.

See also Sec. 4 (a) of the Act.

"That the present acute economic emergency being in part the consequence of a severe and increasing disparity between the prices of agricultural and other commodities, which disparity has largely destroyed the purchasing power of farmers for industrial products, has broken down the orderly exchange of commodities, and has seriously impaired the agricultural assets supporting the national credit structure, it is hereby declared that these conditions in the basic industry of agriculture have affected transactions in agricultural commodities with a national public interest, have burdened and obstructed the normal currents of commerce in such commodities and render imperative the immediate enactment of title I of this Act."

Agricultural Adjustment Act (H. R. 3835, approved May 12, 1933); preamble to Title I.

"Section I. A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist * * *."

National Industrial Recovery Act, of June 16, 1933.

See also the Emergency Railroad Transportation Act, 1933 (S. 1580, approved June 16, 1933), Sec. 2—reference to "the present acute economic emergency."

4. The court may not only take judicial notice of the above cited and other congressional acts referring to the depression, but may take notice of all allusions to it in the Congressional Record, in which numerous discussions of the economic debacle and references to it are reported.

23 C. J., Evidence, sec. 1934, and footnote, particularly f. n. 95 (a, 4).

5. "* * * a declaration by a legislature concerning public conditions that by necessity and duty it must know, is entitled at least to great respect."

Block v. Hirsch, supra, (256 U. S. 135, 154).

See also, on the respect due to a legislative declaration of the existence of an emergency, *Chastleton Corp. v. Sinclair, supra,* (264 U. S. 543, 547).

Block v. Hirsch and *Chastleton Corp. v. Sinclair* concern the respect which this court owes to declarations by Congress, but it is submitted that the court owes the same respect to the declarations of state legislatures.

In *Union Dry Goods Co. v. Georgia Public Service Corp.,* 248 U. S. 372; 39 S. Ct. 117, 9 A. L. R. 1420, reference is made to "the exigencies of the public welfare when determined in an appropriate manner by the authority of the State."

The reference is made in a manner to indicate that the determination, by such authority, that the state faces an emergency, is entitled to more than great respect—is entitled to be regarded, by this court, as practically a conclusive finding.

It has been determined in an appropriate manner by the authority of the State of Minnesota that the real estate mortgage situation in Minnesota is a matter of public exigency. The act involved in the case at bar declares the existence of a "public economic emergency." And both in the case at bar and in *State v. Moeller,* 249 N. W. 330 (advance sheet), the Supreme Court of Minnesota has taken judicial notice of the public emergency attendant upon the real estate mortgage situation in that state.

B. Numerous presumptions come to the aid of a legislature, to support its enactments, and it seems that both federal and state courts indulge the same presumptions with regard to whether state legislation is repugnant to the federal constitution.

In the first place, numerous cases attest the general proposition that any legislative act whatsoever is clothed with a strong presumption of its constitutionality.

> Third Dec. Dig., Constitutional Law, sec. 48;
> 12 C. J., Constitutional Law, sec. 221.

Not only is it presumed that an act of the legislature of a state is in harmony with the constitution of the state, but there is a presumption that the act does not violate the Constitution of the United States.

> 12 C. J., Const. Law, sec. 226, citing, among other cases, *McCabe v. Atchison, etc., Ry. Co.* (1911), 186 Fed. 966; (1914), affd. 235 U. S. 151, 59 L. Ed. 169, 35 S. Ct. 69.

Every reasonable presumption will be made in behalf of the constitutionality of a legislative act.

Eckerson v. Des Moines (1908), 137 Iowa 452, 115 N. W. 177.

The police power, though so exerted by the legislature as to interfere with contracts, is presumed to be legitimately used.

Hunter v. Colfax Consol. Coal Co. (1916), 175 Iowa 245, 154 N. W. 1037;
L. R. A. 1917 D, 15, Ann. Cas. 1917 E, 803.

Certain cases hold that a legislative act will be held constitutional unless *clearly* shown not to be so.

12 C. J., Const. Law, sec. 222.

Certain other cases hold that a legislative act will be held constitutional unless shown *beyond a reasonable doubt* not to be so.

Third Decennial Digest, Constitutional Law, sec. 48 (see p. 470);
12 C. J., Constitutional Law, sec. 222.

Or unless the act is *plainly* unconstitutional.

Third Dec. Dig., Constitutional Law, sec. 48 (see p. 466);
12 C. J., Constitutional Law, sec. 222.

And/or *palpably* so.

Nolen v. Reichman (1915), 225 Fed. 812;
Younker v. Susong (1916), 173 Iowa 663, 156 N. W. 24.

Or unless *clearly* and *palpably* so.

Third Dec. Dig., Const. Law, sec. 48, (see p. 472).

A recent pronouncement in point is as follows:

"Courts are reluctant to declare legislative enactments unconstitutional, and will do so only when the

violation is clear, palpable, and practically free from doubt."

Waugh v. Shirer (Iowa), 249 N. W. 246;
See also *Hubbell v. Herring* (Iowa), 249 N. W. 430, 435.

Among recent cases in point on the presumption of constitutionality and the duty of the courts to seek to sustain rather than defeat legislation, are the following:

Jefferson County v. Busby (Ala.), 148 So. 411, 413;
State v. Dyer (Fla.), 143 So. 201, 203;
State v. Prevatt (Fla.), 148 So. 578, 579;
Wayne Township v. Brown (Ind.), 186 N. E. 841, 847;
Chassanoil v. City of Greenwood (Miss.), 114 So. 781, 783;
Rider v. Cooney (Mont.), 23 Pac. (2d) 261;
State v. Hall (Neb.), 249 N. W. 756, 758-9;
People v. Nebbia, 262 N. Y. 269, 186 N. E. 694, 699;
Commonwealth v. Great American Indemnity Co. (Pa.), 167 Atl. 793, 797-8;
Utah Mfrs. Ass'n. v. Stewart (Utah), 23 Pac. (2d) 229, 232;
Richmond Linen Supply Co. v. City of Lynchburg (Va.), 169 S. E. 554;
Aetna Ins. Co. v. Commonwealth (Va.), 169 S. E. 859, 864;
Mason v. City of Seattle (Wash.), 24 Pac. (2d) 91, 92;
Leonhart v. Board of Education (W. Va.), 170 S. E. 418, 421.

C. The courts are not concerned with legislative motives.

If the good faith of the legislature could be impugned, we might make an argument like this: If a statute is not enacted in good faith, but palpably involves a fraudulent assumption of the exercise of the police power, the statute being but a subterfuge whereby the gaining of ulterior ends is sought—ends other than those of general welfare—the statute itself breaks down the presumptions which clothe

legislative acts. It is obvious that only in an unusual case —a clear case of legislative mala fides—can the statute itself defeat the presumption. Such a statute does not deserve to have the question asked concerning it, whether the general welfare is the more to be preserved by the act or by adherence to the letter of the constitution. Such a statute should without hesitation be declared unconstitutional.

Not only is there no apparent basis for such an argument, but if basis for it existed it could not be made, because bad faith can never be imputed to a legislature. A proper motive for every legislative enactment is *conclusively* presumed.

12 C. J., Constitutional Law, sec. 224;
Appalachian Elec. Power Co. v. Smith, 4 Fed. Supp. 6, 22;
Blanchard v. City of New York, 262 N. Y. 5, 186 N. E. 29, 32.

This court applies the presumption of proper motive to the acts of state legislatures as well as to the acts of Congress.

United States v. Des Moines Navigation & Ry. Co. (1891), 142 U. S. 510, 544, 12 S. Ct. 308, 35 L. Ed. 1099.

"The motives of legislators in the enactment of a statute cannot be inquired into judicially in determining the validity of the enactment."

Third Dec. Dig., Constitutional Law, sec. 70 (3), citing among other cases, *Smith v. Kansas City Title & Trust Co.* (1921), 255 U. S. 180, 210, 41 S. Ct. 243, 65 L. Ed. 577.

"No principle of our constitutional law is more firmly established than that this court may not, in passing upon the validity of a statute, inquire into the motive of Congress. *United States v. Des Moines Navigation Co.,* 142 U. S. 510, 544; *McCrary v. United States,* 195 U. S.

27, 53-59; *Weber v. Fried*, 239 U. S. 325, 330; *Dakota Central Telephone Co. v. South Dakota*, 250 U. S. 163, 184. * * *"

Hamilton v. Kentucky Distilleries Co., supra, (251 U. S. 146, 161).

D. Legislative policy is not a matter for judicial review. It is not for the courts to say whether legislation is wise or unwise, whether it manifests good policy or bad.

"The question of the wisdom, justice, policy, or expediency of a statute are for the Legislature alone."

Third Dec. Dig., Constitutional Law, sec. 70 (3), citing, among other cases:
National Union Fire Ins. Co. v. Warburg (1922), 260 U. S. 71 (see 77), 43 S. Ct. 32, 67 L. Ed. 136;
United States v. Lanza (1922), 260 U. S. 377 (see 385), 43 S. Ct. 141, 67 L. Ed. 314.

"Nor may the court inquire into the wisdom of the legislation. *McCullough v. Maryland*, 4 Wheat. 316, 421; *Gibbons v. Ogden*, 9 Wheat. 1, 197; *Brushaber v. Union Pacific R. R. Co.*, 240 U. S. 1, 25; *Rast v. Van Deman & Lewis Co.*, 240 U. S. 342, 357."

Hamilton v. Kentucky Distilleries Co., supra, (251 U. S. 146, 161).

See also:

Block v. Hirsch, supra (256 U. S. 135, 138);
Union Dry Goods Co. v. Georgia Public Service Corp., supra (248 U. S. 372, 374);
Atlantic Coast Line Rd. Co. v. Goldsboro, supra, (232 U. S. 548, 558).

And the following recent decisions:

Williams v. Mayor, 53 S. Ct. 431, 433;
Wonder Bakeries Co., Inc., v. White, 3 F Supp. 311;
Jefferson County v. Busby (Ala.), 148 So. 411, 413;

State v. Dyer (Fla.), 143 So. 201, 203-4;
Mississippi State Tax Commission v. Flora Drug Co. (Miss.), 148 So. 373, 377;
Little v. American State Bank (Mich.), 249 N. W. 22, 23;
People v. Nebbia, 262 N. Y. 269, 186 N. E. 694, 699;
McPherson v. Fisher (Ore.), 23 Pac. (2d), 913, 914;
State v. Morrison (S. Dak.), 249 N. W. 563, 565;
Leonhart v. Board of Education (W. Va.), 170 S. E. 418, 421.

Therefore the court is not concerned with whether creditors may also be debtors. If the legislature deems it more important to the public welfare to go to the aid of debtors than to go to the aid of creditors, if the latter need aid, the matter lies in the realm of legislative wisdom and discretion.

Legislative wisdom or lack thereof, in doing nothing for creditors in the period 1912-1920, a period of rising prices and security-valuations, if indeed anything could or should have been done for creditors in that period, is not a proper matter for judicial inquiry, and is not a proper criterion by which to determine whether a present exercise of the police power, for the relief of the public through the relief of mortgagors of real estate, is or is not a valid exercise of the power.

If it is the thought of the legislature that in view of the large areas of agricultural lands in the state and the great number of its citizens who are engaged in agriculture, which is a paramount industry of the state, the vocation of the farmer is so fundamentally important that every effort should be made to help the farmer remain on his farm, the legislature is certainly entitled to the thought. If it is the thought of the legislature that homes and homeowners are of such fundamental importance to the state that every effort should be made to help the homeowner keep his home, the legislature is certainly entitled to the thought. If the legis-

lature has the thought that although in these times most creditors are debtors, nevertheless there are more debtors than creditors, and that a man's distress in the capacity of debtor is greater than his distress in the capacity of creditor, and that the general welfare can be better promoted by a concession to debtors than by a concession to creditors, the legislature is certainly entitled to the thought. If the legislature has the thought that although it can do something positive for the general welfare by aiding mortgagor-debtors, there is little or nothing positive it can do to aid mortgagee-creditors, and that to do nothing with regard to mortgage debts is but to let a bad situation grow worse, alike for mortgagors and mortgagees and the public in general, the legislature is certainly entitled to the thought.

E. The legislature is the first judge of what is for the greatest good of the greatest number, and so for the true ultimate good of all.

> "Great constitutional provisions must be administered with caution. Some play must be allowed for the joints of the machine, and it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts."
>
> *Missouri, Kansas & Texas Ry. Co. v. May* (1904), 194 U. S. 267, 270, 24 S. Ct. 638, 48 L. Ed. 971.

> "The legislative department is the judge, within reasonable limits, to determine what public convenience and public welfare require, and the wisdom of its legislation is not the concern of the courts. It is our duty to sustain an act, unless its invalidity is in our judgment beyond a reasonable doubt. *Beach v. Bradstreet,* 85 Conn. 344, 82 Atl. 1030, Ann. Cas. 1913 B, 946; *State v. Lay,* 86 Conn. 145, 84 Atl. 522; *Cooper v. Telfair,* 4 Dall. 14, 19, 1 L. Ed. 721.
>
> "The Legislature by the passage of this act has

judged that the public convenience and welfare would be substantially subserved by its enactment."

State v. Bassett (1924), 100 Conn. 430, 123 Atl. 842, 37 A. L. R. 131.

F. Before the court can overturn the act, the court must find that the legislature made a mistake as to whether there is any basis in fact for a finding that the public welfare is jeopardized, else a mistake as to whether there is any reasonable connection between the provisions of the act and the thing which jeopardizes that welfare.

The police power is exercised improperly if "there is no basis in fact on which to support the legislative finding of public welfare, or when the remedy prescribed has no possible connection with the evil to be cured."

American Coal Mining Co. v. Special Coal & Food Commission of Indiana (1920), 268 Fed. 563; (1921) appeal dismissed, 258 U. S. 632, 66 L. Ed. 801, 42 S. Ct. 273.

And see:

State v. Harper (1923), 182 Wis. 148, 196 N. W. 451, 453, 33 A. L. R. 269;

People v. Coulides, 265 N. Y. Supp. 765, 768 (recent case).

The court is confronted by two questions: 1. Whether a basis in fact exists for the legislative judgment that a real estate mortgage situation of an emergency character exists, or whether such judgment is unreasonable (arbitrary). 2. Whether the statute has "any possible connection with the evil to be cured."

A thing is arbitrary which is without basis in any fact other than the pleasure or caprice of the author of the thing, and therefore without a reasonable basis, or basis in reason; unreasonable.

See *Lindsley v. National Carbonic Gas Co.* 220 U. S. 61, 78, 31 S. Ct. 337, 55 L. Ed. 369, Ann. Cas. 1912 C, 160.

The court judicially notices the existing emergency—judicially knows that a "basis in fact" exists for "a finding of public welfare." Consequently the legislative finding that such an emergency exists cannot be unreasonable (arbitrary). However, were the court without knowledge of such "basis in fact," the court would be bound to presume its existence.

Such facts and circumstances as must exist to render a legislative act constitutional are *presumed* to exist.

12 C. J., Constitutional Law, sec. 222.

It has even been said that it is the duty of the court to assume the existence of *any conceivable facts and circumstances* the existence of which is necessary to the constitutionality of a legislative act.

State v. Hutchinson Ice Cream Co. (1914), 168 Iowa 1, 147 N. W. 195, L. R. A. 1917 B, 198; (1916) affd. 242 U. S 153, 37 S. Ct. 28, 61 L. Ed. 217.

The legislature is presumed to have passed an act with full knowledge of existing conditions.

12 C. J., Constitutional Law, sec. 225.
And see *United States v. Des Moines Navigation and Ry. Co., supra,* (142 U. S. 510, 544).

There are recent cases in point on the proposition that a legislature is presumed to have found the facts on which its power to act must be predicated.

Hutchens v. Jackson (N. Mex.), 23 Pac. (2d) 355;
Leonhart v. Board of Education (W. Va.), 170 S. E. 418, 421.

"The most that can be said is that whether that determination was an unreasonable, arbitrary or unequal exercise of power is fairly debatable. In such circum-

stances, the settled rule of this court is that it will not substitute its judgment for that of the legislative body charged with the primary duty and responsibility of determining the question. *Euclid v. Ambler Co., supra* (272 U. S. 365), 388, 395; *Radric v. New York,* 264 U. S. 292, 294; *Hadachek v. Los Angeles,* 239 U. S. 394, 408-412, 413-413; *Cusack Co. v. City of Chicago,* 242 U. S. 526, 530-531; *Rast v. Van Danman & Lewis,* 240 U. S. 342, 357; *Price v. Illinois,* 238 U. S. 446, 452."

Zahn v. Board of Public Works (1925), 274 U. S. 325, 328, 47 S. Ct. 594, 71 L. Ed. 1074.

It is submitted, therefore, that where reasonable minds cannot differ over whether there is an emergency, it is as fully a matter of judicial as of legislative finding that an emergency does or that one does not exist, but that if reasonable minds can differ in the matter, so that it is one of reasonable doubt, the finding of the legislature should be deemed conclusive. Where the legislative finding is in reason indisputedly right, as where it is fortified by judicial knowledge, the presumption in favor of the finding cannot by any possibility be overcome; where the finding is in reason indisputably wrong—clearly unreasonable or arbitrary—the presumption is automatically overthrown. Where in reason there is doubt whether the finding is right or wrong, whether well or ill founded, the presumption controls. The legislative finding that the real estate mortgage situation is an emergency situation is in reason indisputably right—judicial knowledge fortifies the presumption in favor of the finding; it is insuperable.

Principle applicable where legislative judgment is obviously erroneous: "The court is not at liberty to shut its eyes to an obvious mistake, when the validity of the law depends on the truth of what is declared. *Block v. Hirsch,* 256 U. S. 154. *Chas. Wolff Packing Co. v. Court of Industrial Relations,* 262 U. S. 522, 536."

The Chastleton Corp. v. Sinclair, supra, (264, U. S. 543, 547).

The principle applicable where the legislative judgment is obviously correct, as where the legislative finding coincides with something that is a matter of judicial knowledge, may be stated thus: The court is not at liberty to shut its eyes to a legislative declaration of what is a generally known fact, whether or not the validity of a law demands on the truth of the declaration, but especially if the validity of a law so depends. If there were no emergency and it were generally known that none existed, but the legislature should declare the existence of one, the court would take notice of the obvious legislative mistake. Needless to say, the court may equally notice the truth of a legislative finding of the existence of an emergency when its existence is obvious.

Somewhat in point is *People v. La Fetra* (1921), 230 N. Y. 429, 130 N. E. 601, 604.

Principle applicable where there is doubt whether the legislative judgment is correct: "In determining the question as to the constitutionality of an act of the Legislature, we must remember that the Legislature is an independent part of our government. It is presumed to have had the Constitution in mind in passing the act. It is the exponent of the popular will, and its acts must be treated with respect, reconciled, and sustained if possible. A court is never justified in setting at naught the will of the Legislature, unless it is clearly repugnant to the Constitution. The rule laid down in *Fletcher v. Peck,* 6 Cranch 87, 128, 3 L. Ed. 162, is sound and salutary: 'The question, whether a law be void for its repugnancy to the constitution, is, at all times, a question of much delicacy, which ought seldom, if ever, to be decided in the affirmative, in a doubtful case.'"

Leonhart v. Board of Education (W. Va.), 170 S. E. 418, 421, (recent case).

It is submitted, moreover, that "necessary," in such an expression as "necessary for the public welfare," has reference more to the situation or occasion from which the legislation springs than to whether the particular remedy is the only one or even the best one that could be supplied. Given the actual occasion or situation which reasonably, though not absolutely, involves a necessity for action, because of some actually existing or actually threatened public detriment or danger, *any* enactment, though the least reasonable or least desirable of a number of possible enactments that could, within reason, be regarded as designed to terminate or obviate the particular detriment or danger, is within the meaning of "necessary for the public welfare"—is legislation for a public "need."

> "The doctrine that the police power is a law of necessity may well be said to furnish the key to what is within and what is without the boundaries of such power; not that a police regulation to be legitimate must be an absolute essential to the public welfare, but that the exigency to be met must so concern such welfare as to suggest, reasonably, necessity for a legislative remedy."

State v. Redmon (1907), 134 Wis. 89, 114 N. W. 137, 126 Am. St. Rep. 1003, 14 L. R. A. N. S. 229, 15 Ann Cas. 408.

And see:

City of Chicago v. Washingtonian Home (1919), 289 Ill. 206, 124 N. E. 416, 419, 6 A. L. R. 1584.

In most cases, the court is more concerned with the reasonable relation of the means to the end sought than with the necessity of adopting a means, because the necessity is always factual, but the means is always a law. Given the necessity, the law must be a *reasonable* means to the end. Can any one doubt that the statute involved in the case at

bar is a reasonable means to an end justifiably sought by the Minnesota legislature?

> "Exercise of the power is primarily though not conclusively for the legislature and so long as its exercise of the power bears reasonable relation to a legitimate purpose, the courts may not interfere."
>
> Third Dec. Dig., Constitutional Law, sec. 70 (3) (see p. 557).

And see *State v. Harper* (1923), 182 Wis. 148, 196 N. W. 451, 452-3, 33 A. L. R. 269.

> "* * * the validity of a police regulation, whether established directly by the State or by some public body acting under its sanction, must depend upon the circumstances of each case and the character of the regulation, whether arbitrary or reasonable and whether really designed to accomplish a legitimate public purpose."
>
> *Chicago, Burlington & Quincy Ry. Co. v. People, supra,* (200 U. S. 561, 592).

> "It was said in *Purity Extract & Tonic Co. v. Lynch,* 226 U. S. 192, 204, 33 Sup. Ct. 44, 47, 57 L. Ed. 184, that, in examining a given statute relating to an appropriate subject of police regulation to determine whether its provisions are reasonable—
>
> 'The inquiry must be whether, considering the end in view, the statute passes the bounds of reason and assumes the character of a merely arbitrary fiat'."
>
> *State v. Bassett* (1924), 100 Conn. 430, 123 Atl. 842, 37 A. L. R. 134.

Even as to the question whether the law, as a means, is reasonable, it would seem that the lawmaking branch of the government and not the court is the first judge, and that its judgment should not be overruled unless plainly, clearly,

palpably, and beyond a reasonable doubt, such judgment is wrong.

"* * * It is enough that we are not warranted in saying that legislation * * * has no reasonable relation to the relief sought. *Chicago, Burlington & Quincy R. R. Co. v. McGuire,* 219 U. S. 549, 569."

Block v. Hirsch, supra, (256 U. S. 135, 158).

And see:

City of Aurora v. Burns, 319 Ill. 84, 149 N. E. 784, 787.

G. "A large discretion is necessarily vested in the Legislature to determine, not only what the interests of public convenience and welfare require, but what measures are necessary to secure such interests. *Cotter v. Stoeckel,* 97 Conn. 244, 116 Atl. 248; *Young v. Lemeux,* 79 Conn. 440, 65 Atl. 436, 600, 20 L. R. A. (N. S.) 160, 129 Am. St. Rep. 193, 8 Ann. Cas. 452"

State v. Bassett (1924), 100 Conn. 430, 123 Atl. 842, 37 A. L. R. 131.

"While this power is subject to limitations in certain cases, there is a wide discretion on the part of the legislature in determining what is and what is not necessary —a discretion which courts ordinarily will not interfere with. The leading case upon this point is that of *Charles River Bridge v. Warren Bridge,* 11 Pet. 420, in which a franchise to maintain a ferry between Cambridge and Boston, under which a bridge was subsequently erected, was held to be subject to the power of the legislature to establish a parallel bridge between the same points. In *Stone v. Mississippi,* 101 U. S. 814, a charter to a lottery company for twenty-five years was held to be subject to the power of the State to abolish lotteries altogether. Similar cases announcing the same principle are *Boyd v. Alabama,* 94 U. S. 645; *Beer Company v. Massachusetts,* 97 U. S. 25; *Butchers' Union Co. v. Crescent City Co.,* 111 U. S. 746; *New Orleans*

Gas Co. v. Louisiana Light Co., 115 U. S. 650, 672; *Mugler v. Kansas*, 123 U. S. 623, 665; *Chicago & R. R. Co. v. Chicago*, 166 U. S. 226."

Manigault v. Springs (1905), 199 U. S. 473, 480, 26 S. Ct. 127, 50 L. Ed. 274.

II. "A limit in time, to tide over a passing trouble, well may justify a law that could not be upheld as a permanent change."

Block v. Hirsch, supra, (256 U. S. 135, 157).

One of the reasons why Chapter 339, Laws of Minnesota of 1933, does not involve an arbitrary assumption of power, but a reasonable exercise of power possessed, is that by its own terms the act will expire on May 1, 1935. By that time there will have been another meeting of the Minnesota legislature. Thus there will have been a legislative opportunity to judge whether circumstances and conditions that now lie in the lap of the future shall make it necessary, for the public welfare, to extend the life of the act. Congress twice continued in effect the provisions of the emergency measures considered in *Block v. Hirsch, supra.*

See *The Chastleton Corp. v. Sinclair, supra,* (264 U. S. 543).

It would have been obviously unreasonable on the part of the Minnesota legislature to have provided in the act for the termination thereof before the legislature is of a certainty to convene again, and thus not to have forestalled the possibility that the act might go out of existence at a time when the extension of the period of redemption may, more than ever, be essential to the public welfare.

As *The Chastleton Corporation v. Sinclair* shows, measures passed to meet an emergency, and valid when passed, will continue valid as long as the emergency lasts, unless they

sooner expire by their own terms. No one knows how long the mortgage-situation emergency will last. That it is still with us admits of no more doubt than that it was with us when said Chapter 339 was passed.

> A law "depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change even though valid when passed."
>
> *The Chastleton Corporation v. Sinclair, supra,* (264 U. S. 543, 547).

The quotation from *The Chastleton Corporation* case must not be taken too literally. No one knows just when the depression began; no one will ever be able to say just when it will have ended. Even after it may be said to be a thing of the past, innumerable readjustments must follow in its train. The owners of farms and homes, in order ultimately to save them, may need a post-depression period in which to adjust their affairs. If we could be sure beyond peradventure of a doubt that the depression will have become a thing of history *before* May 1, 1935, we would still maintain that the act does not unnecessarily extend the period of redemption.

> "'The power is not limited to victories in the field and dispersion of the (insurgent) forces. It carries with it inherently the power to guard against the immediate renewal of the conflict, and to remedy the evils which have arisen from its rise and progress'."
>
> *Hamilton v. Kentucky Distilleries Co., supra,* (251 U. S. 146, 161).

I. It does not devolve upon appellees to show that the statute is constitutional, but upon appellant to show, if possible, that it is not.

12 C. J., Constitutional Law, sec. 221;
Third Dec. Dig., Constitutional Law, sec. 48 (see p. 473).

"* * * when a litigant comes into court to declare a particular statute null and void as being beyond the power of the Legislature to pass he must show precisely and conclusively that it is beyond such power."

People v. City Prison Warden, 286, 154 App. Div. 413, 139 N. Y. Supp. 277.

Recent cases in point:

Williams v. Mayor, 53 S. Ct. 431, 433;
Jefferson County v. Busby (Ala.), 148 So. 411; 413;
State v. Prevatt (Fla.), 148 So. 578, 579;
McPherson v. Fisher (Ore.), 23 Pac. (2d) 913.

Appellant, to prevail, must show that such an emergency as the act is intended to meet does not exist, else that, if the emergency exists, there is "no possible connection" (see *American Coal Mining Co. v. Special Coal and Food Commission of Indiana*, 268 Fed. 563)—we take this to mean no possible reasonable connection—between the emergency and the provisions of the act. Appellant can not attack the act on the ground that it is impolitic and unwise. Appellant can not attack the act on the ground that it is unnecessary, either in the sense that, the emergency existing, it might, and perhaps had better be, left to work itself out without legislative interference, or in the sense that the legislature might have found a different and perhaps better way of meeting the emergency—perhaps even a way that would not involve a conflict between legislation and the letter of the constitution. Appellant can not urge, because the court can not consider, the grounds in question. Granted that there is an emergency, and granted that the provisions of the statute are by any reasonable possibility such as tend to meet the emer-

gency, the court is bound to hold the act constitutional; the court is precluded from questioning the motive or the wisdom of the legislature or considering the necessity or the nonnecessity of the legislature's meeting the emergency in the particular way in which the legislature has met it by the particular act in question.

III.

The statute is not repugnant to the contract clause of Section 10 of Article 1 of the Constitution of the United States.

A. Constitutional inhibitions upon impairment of the obligation of contracts yield to considerations of general welfare. Under the police power, the obligation of contracts may be impaired, and the police power of the people of the state may prevail not only over the contract clause of the constitution of the state, but over the contract clause of the federal constitution also.

In an eminent domain case, citing police power cases, this court laid down the following proposition, with respect to a state's want of power to bind itself not to contravene the letter of the contract cause of the federal constitution:

> "There can be now, in view of the many decisions of this court on the subject, no room for challenging the general proposition that the States can not by virtue of the contract clause be held to have divested themselves by contract of the right to exert their governmental authority in matters which from their very nature so concern that authority that to restrain its exercise by contract would be a renunciation of power to legislate for the preservation of society or to secure the performance of essential governmental duties. *Beer Company v. Massachusetts*, 97 U. S. 25; *Stone v. Mississippi*, 101 U. S. 814; *Butchers' Union Co. v. Crescent City Co.*, 111 U. S. 746; *Douglas v. Kennedy*, 168 U. S. 488; *Manigault*

v. Springs, 199 U. S. 473; *Texas & New Orleans R. R. Co. v. Miller,* 221 U. S. 408."

Pennsylvania Hospital v. Philadelphia (1917), 245 U. S. 20, 23, 38 S. Ct. 35, 62 L. Ed. 124.

Certainly, if the state can not bind itself not to impair the obligation of its own contracts through the exercise of the police power, the state is doubly free, in the interests of general welfare, to exercise the power to impair the obligation of contracts between individuals, especially in a matter as to which the state has never even attempted to bind itself, by contract, not to interfere.

"Const. U. S., art. 1, Sec. 10, prohibiting impairment of obligations of contract, and due process and equal protection clauses of 14th amendment do not extend to subjects affecting general welfare of public."

Third Dec. Dig., Constitutional Law, sec. 117.

"The occasions to consider this subject in its bearings upon the clause of the Constitution of the United States which forbids the States passing any laws impairing the obligation of contracts has been frequent and varied; and it has been held without dissent that this clause does not so far remove from State control the rights and properties which depend for their existence or enforcement upon contracts, as to relieve them from the general regulations for the good government of the State and the protection of the rights of individuals as may be deemed important."

2 Cooley, Constitutional Limitations (8th ed.), p. 1237.

In *Union Dry Goods Co. v. Georgia Public Service Corp., supra,* (248 U. S 372, 377), Mr. Justice Clarke, in delivering the opinion of the court, said, after citing a number of the decisions of this court:

"These decisions, a few of many to like effect, should suffice to show the most skeptical or belated investigator that the right of private contract must yield to the exigencies of the public welfare when determined in an appropriate manner by the authority of the State, * * *."

B. "Contracts are made subject to the exercise of the police power of the state, when such exercise is otherwise justified."

Third Dec. Dig., Constitutional Law, sec. 117;
Recent case: *City of Butte v. Roberts* (Mont.), 23 Pac. (2d) 342.

"All contracts, whether made by the state itself, by municipal corporations, or by individuals, are subject to be interfered with, or otherwise affected by, subsequent statutes enacted in the bona fide exercise of the police power, and do not, by reason of the contracts clause of the constitution, enjoy any immunity from such legislation."

12 C. J., Constitutional Law, sec. 603.

"All contracts and all rights, it is declared, are subject to this power, and not only may regulations which affect them be established by the State, but all such regulations must be subject to change from time to time, as the general well-being of the community may require, or as experience may demonstrate the necessity."

2 Cooley, Constitutional Limitations (8th ed.), p. 1237.

Contracts are inherently subject to the impairment of their obligation through the exercise of the police power; a contract is entered into subject to the possibility that it may have to yield in whole or in part to the exigencies of the public welfare.

Edgar A. Levy Leasing Co. v. Siegel, supra, (258 U. S. 242, 249).

In *Marcus Brown Holding Co. v. Feldman* (1921), 256 U. S. 170, 198, 41 S. Ct. 465, 65 L. Ed. 877, Mr. Justice Holmes, delivering the opinion of the court stated that

> "contracts are made subject to this exercise of the power of the state when otherwise justified, * * *. *Manigault v. Springs*, 199 U. S. 473, 480; *Louisville & Nashville R. R. Co. v. Mottley*, 219 U. S. 467, 482; *Chicago & Alton R. R. Co. v. Tranbargar*, 238 U. S. 67, 76, 77; *Union Dry Goods Co. v. Georgia Public Service Corporation*, 248 U. S. 372, 375; *Producers Transportation Co. v. Railroad Commission of California*, 251 U. S. 228, 232."

In *Atlantic Coast Line Rd. Co. v. Goldsboro, supra*, (232 U. S. 548, 558), Mr. Justice Pitney, in delivering the opinion of the court, said that

> "it is settled that neither the 'contract' clause nor the 'due process' clause has the effect of overriding the power of the State to establish all regulations that are reasonably necessary to secure the health, safety, good order, comfort, or general welfare of the community; that this power can neither be abdicated nor bargained away, and is inalienable even by express grant; and that all contract and property rights are held subject to its fair exercise. *Slaughterhouse Cases*, 16 Wall. 36, 62; *Munn v. Illinois*, 94 U. S. 113, 125; *Beer Co. v. Massachusetts*, 97 U. S. 25, 33; *Mugler v. Kansas*, 123 U. S. 623, 665; *Crowley v. Christenson*, 137 U. S. 86, 89; *New York, etc. R. R. Co. v. Bristol*, 151 U. S. 556, 567; *Texas, etc. R. R. Co. v. Miller*, 221 U. S. 408, 414, 415."

C. The reasons for the principles here set forth are stated as follows by Mr. Justice Brown, in *Manigault v. Springs, supra*, 199 U. S. 473, 480.

> "It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the State from exercising such powers as are vested in it for the promotion of the common weal,

or are necessary for the general good of the public, though contracts previously entered into by individuals may thereby be affected. This power, which in its various ramifications is known as the police power, is an exercise of the sovereign rights of the government to protect the lives, health, morals, comfort and general welfare of the people, and is paramount to any rights under contracts between individuals. Familiar instances of this are, where parties enter into contracts, properly lawful at the time, to sell liquor, operate a brewery or distillery, or carry on a lottery, all of which are subject to impairment by a change of policy on the part of the State, prohibiting an establishment or continuance of such traffic;—in other words, that parties by entering into contracts may not estop the legislature from enacting laws intended for the public good."

"This rule is not only reasonable but necessary, as a contrary rule would enable individuals, by their contracts, to deprive the state of its sovereign power to enact laws for the public welfare."

12 C. J., Constitutional Law, sec. 603.

"If contracts valid when made, covering a subject matter within the police power, are not subject to the subsequent exercise of that power on the part of the state it would place in the hands of individuals the power to withdraw from the state the right to subsequently exercise its police power."

Raymond Lumber Co. v. Raymond Light, etc., Co. (1916), 92 Wash. 330, 159 Pac. 133, 136, L. R. A. 1917 C, 574.

D. Much has been said and written about the sanctity of contract. Even if there were no contract clause in the constitution the law would undoubtedly hold the contractual obligation sacred. In general, it is for the public welfare to hold sacred the obligation of contracts, but contracts can not, under the pretense of sanctity, directly or indirectly defeat that welfare.

As has been pointed out, contracts are inherently subject

to the impairment of their obligation through the exercise of the police power. (See III B, this argument.) The sanctity of contracts is, necessarily, conditioned by the inherent susceptibility of contracts to yielding to the police power and the demands of general welfare.

The contract clause was not incorporated into the federal constitution because of the sanctity of contracts. There are other obligations as legally and morally binding as those of contract, and therefore as sacred, but it was not thought necessary to place them specifically under the aegis of the organic law. Instance the obligations incident to the marital statutes. It has been held that the contract clause, even, does not, itself, protect the obligation of certain quasi contracts.

Harmonson v. Wilson (1887), 1 Hughes 207, Fed. Cas. No. 6074 (11 Fed. Cas. 541, 549);
Morley v. Lake Shore Ry. Co. (1892), 146 U. S. 162, 13 S. Ct. 54, 36 L. Ed. 925;
Louisiana v. New Orleans (1883), 109 U. S. 285, 288, 3 S. Ct. 211, 27 L. Ed. 936;
Garrison v. City of New York (1871), 21 Wall. (88 U. S.) 196, 203.

It may well be considered an open question whether the contract clause was not more the result of repudiation of debts by financially embarrassed states, and the result of attempts by such states to replenish their empty treasuries at the expense of the obligation of contracts between individuals, than a result of regard for the sanctity of contract or a result of attempts by the states to favor the debtor class. If the clause was the result of attempts by the states to favor the debtor class, why was not the federal government inhibited from ever making like attempts? There was fear of what the federal government might do, as the first ten amendments to the federal constitution attest. Yet the federal government is free to impair the obligation of contracts.

Even if the contract clause was primarily the result of attempts by the states to favor the debtor class, the question arises whether, in a complex civilization such as now obtains, as contrasted with the comparatively simple civilization that obtained in 1789, the police power may not with justification reach out to affect matters with which it could not then justifiably have interfered. (See IH, this Argument.)

The fact that the contract clause was to protect the people of the several states from laws of a certain type does not limit to that type bills by which the obligation of contracts can not be impaired, but nevertheless makes it easier to yield the letter of the clause to the police power in a situation in which legislation, in impairing the obligation, does not impose a burden on the public and retard the public welfare, but removes a burden from the public and promotes that welfare.

E. If a sheriff's certificate of sale evidences a contract between him or the state and a purchaser at an execution sale, the obligation of that contract, like the obligation of any other contract, is secondary to the matter of public welfare, which is the primary concern of all law. It is difficult to see why, if the obligation evidenced by the certificate is within the meaning of "obligation of contracts" as used in the contract clause of the federal constitution, such contract is not as liable as any other to yield to considerations of general welfare. If between the sheriff or the state and such purchaser any contract arises which is within the purview of the contract clause, that contract is as inherently subject to the police power, and as susceptible to yielding to it, as is any other contract. And if the purchaser contracts that he will convey to a third person at the end of the statutory one-year redemption period, provided that before the end of the period the land shall not have been redeemed, the police

power, in the same behalf, may impair the contract between the foreclosure purchaser and the third person.

Whether the obligation of a contract can be impaired does not depend upon the subject matter of the contract, except as that subject matter may be related to considerations of general welfare. Nor can it depend upon what the precise relation between the parties to the contract may be, except as that relation may concern the welfare of the public.

F. Whether a legislative act validly impairs the obligation of contract does not depend upon whether the act alters the substantive or alters the adjective law pertaining to contract.

Can it make any difference whether a statute indirectly impairs the obligation of contracts or impairs it directly? The test of the valid exercise of the police power is not whether it acts directly or indirectly upon the obligation but whether and to what extent impairment of the obligation will promote the general welfare.

The contract clause does not in terms or by implication distinguish between direct and indirect impairment of a contractual obligation. Both direct and indirect are within its purview. Hence the letter of the clause may be either directly or indirectly contravened, in the interest of the public welfare.

Parties who enter into contracts can no more estop the legislature from directly than from indirectly impairing the obligation of contracts in a proper case by "enacting laws intended for the public good."

It would seem to be an *a priori* proposition that a power that can abrogate the very contract itself can change or destroy the remedy thereon, conceded always that the power does not exist and therefore can never be exercised, in any case in which the welfare of society as a whole is not endangered.

It seems that under the police power ordinary remedies (e. g., trial by jury) may be suspended.

Block v. Hirsch, supra, (256 U. S. 135, 158).

In *Chadwick v. Moore* (Pa., 1844), 8 Watts & Sergeant 49, a statute which stayed for one year the sale of property which, when first offered for sale by the sheriff, would not fetch at least two-thirds of its appraised value, was upheld, although no limit was placed upon the life of the statute. Said Gibson, C. J.:

> "Though unlimited in its duration, this statute was evidently produced by the emergency which arose from the collapse of the credit system; and taking from it the right to sell for two-thirds the value, reserved for the benefit of the creditor, it becomes an unconditional law to suspend the enforcement of the contract for a year. Is such an exercise of the sound discretion spoken of, so unreasonable as materially to impair the remedy, and amount to a denial of the right? To hold that a state Legislature is incompetent to relieve the public from the pressure of sudden distress by arresting a general sacrifice of property by the machinery of the law, would invalidate many statutes whose constitutionality has hitherto been unsuspected."

G. If under the police power the legislature can interfere with the remedy, the legislature can so interfer at any stage of the remedy. It would be anomalous if general welfare were the paramount consideration at one point but not at another.

In *Gault's Appeal* (1859), 33 Pa. 94, it was held that after judicial sale of property for nonpayment of taxes, the period to redeem could be increased from one year to two years, even though the purchaser's contract with the sheriff was impaired, as the power to tax included the power to impair the obligation of contracts, even to the point of obliterating them entirely.

The argument in *Gault's Appeal* is applicable in the case at bar, because the police power, like the power to tax, includes the power to impair the obligation of contracts, even to the point of wiping them out. The only difference between the power to tax and the police power, in that connection, lies in the fact that the latter can not override the contract clauses arbitrarily, but only in furtherance of the welfare of the public.

Whether, in the absence of public emergency, *Gault's Appeal* should be followed in all respects may be somewhat open to question. *Gault's Appeal* was not an emergency case; neither are the cases in which the courts have refused to follow it. Instance *Rott v. Steffen* (1921), 229 Mich. 241, 201, N. W. 227 (see 230). But it would seem that in a time of public emergency the police power is adequate, whether by way of reenforcing the taxing power or not, to wipe out the advantages of the purchaser or increase or prolong those of a person entitled to redeem the land from sale, if to do so will promote the general welfare.

H. In numerous cases concerning remedial provisions in their relation to constitutional inhibition against impairment of the obligation of contracts, there is hardly a syllable about police power or emergency legislation.

Farmers Co-operative Creamery v. Iowa State Ins. Co. (1900), 112 Iowa 608, 84 N. W. 904;
Shaffer v. Bolander (Iowa, 1854), 4 G. Gr. 201;
Burton v. Emerson, Shields & Co. (Iowa, 1854), 4 G. Gr. 393;
Correll v. Hull (1854), 4 G. Gr. 455;
Bradley v. Lighteap (1903), 195 U. S. 1, 24 S. Ct. 748, 49 L. Ed. 65;
Oshkosh Waterworks Co. v. Oshkosh (1903), 187 U. S. 437, 47 L. Ed. 249, 23 S. Ct. 234;
Daniels v. Teraney (1880), 102 U. S. 415, 26 L. Ed. 187, 2 Ky. Law Rep. 176;
Memphis v. U. S. (1877), 97 U. S. 293, 24 L. Ed. 920;

Edwards v. Kearzey (1877), 96 U. S. 595, 24 L. Ed. 793;
Von Hoffman v. Quincy (1866), 71 U. S. (4 Wall.) 535, 18 L. Ed. 403;
Gunn v. Berry (1872), 82 U. S. (15 Wall.) 610, 21 L. Ed. 212;
White v. Hart (1871), 80 U. S. (13 Wall.) 646, 20 L. Ed. 685;
Howard v. Bugbee (1860), 65 U. S. (24 How.) 461, 16 L. Ed. 753;
Green v. Biddle (1823), 21 U. S. (8 Wheat.) 1, 8, 5 L. Ed. 547;
Thornberg v. Jorgensen (1932), 60 F. (2d) 471;
Lamb v. Powder River Live Stock Co. (1904), 132 Fed. 434;
Smith v. Spillman (1918), 135 Ark. 279, 205 S. W. 107, 1 A. L. R. 136;
Robards v. Brown (1883), 40 Ark. 423;
Malone v. Roy (1901), 134 Cal. 344, 66 Pac. 313;
Thresher v. Atchison (1897), 117 Cal. 73, 48 Pac. 1020, 59 Am. St. Rep. 159;
State v. Bradshaw (1897), 39 Fla. 137, 22 So 296;
Hull v. State (1892), 29 Fla. 79, 11 So. 97, 16 L. R. A. 308, 30 Am. St. Rep. 95;
Wilder v. Campbell (1896), 4 Ida. 695, 43 Pac. 677;
Collins v. Collins (1880), 79 Ky. 88;
Phinney v. Phinney (1889), 81 Me. 450, 17 Atl. 405, 4 L. R. A. 348, 10 Am. St. Rep. 266;
Cargill v. Power (1850), 1 Mich. 369;
Bremen Mining, Etc., Co. v. Bremen (1905), 13 N. Mex. 111, 79 Pac. 806.

Barnitz v. Beverly (1895), 163 U. S. 118, 16 S. Ct. 1042, 41 L. Ed. 93, is devoted to the proposition "that the laws which prescribe the mode of enforcing a contract, which are in existence when it is made, are so far a part of the contract that no changes in these laws which seriously interfere with that enforcement are valid, because they impair its obligation within the meaning of the constitution of the United States." But what of it? The police power can act

on those as well as on any other parts of the contract. An assumption that the statute discussed in the case was the result of the panic of 1893 would be gratuitious. The case makes no mention of any panic, depression or other crisis or emergency. At any rate, no consideration of the police power, in connection with the general welfare in the face of an emergency, or indeed in any connection whatever, entered into the decision of the case. If the statute *was* due to a panic, and if the decision *is* in point on the relation of the police power to the contract clause of the federal constitution, the case must yield to the authority of the later and now prevailing decisions of the United States Supreme Court.

Similar criticisms are in order with respect to the cases on which *Barnitz v. Beverly* relies, including the leading case of *Bronson v. Kinzie* (1843), 42 U. S. (1 How.), 311, 11 L. Ed. 143; also *McCracken v. Hayward* (1844), 43 U. S. (2 How.) 608, 11 L. Ed. 397; *Brine v. Insurance Co.* (1877), 96 U. S. 627, 24 L. Ed. 858; *Seibert v. Lewis* (1886), 122 U. S. 284, 76 S. Ct. 1190, 30 L. Ed. 1161; *Louisiana v. New Orleans* (1880), 102 U. S. 203.

It is not without reason that in a recent case, *Addiss v. Selig*, 264 N. Y. Supp. 816 (see top of 824), consideration of the police power is eliminated from an opinion in which *Bronson v. Kinzie, supra,* is discussed.

Connecticut Mutual Life Ins. Co. v. Cushman (1882), 108 U. S. 51, 2 S. Ct. 236, 27 L. Ed. 648, implies that a statute would impair the obligation of contract if it should "diminish the duty of the mortgagor to pay what he agreed to pay, or shorten the period of payment, or interfere with or take away any remedy which the mortgagee had, by existing law, for the enforcement of its contract." Admitted. Admitted, also, that such a statute, passed when normal conditions obtain, would be unconstitutional. But whether it would be

so if enacted under the police power in the face of an emergency is another question, upon which the case does not touch.

Conley v. Barton (1923), 260 U. S. 677, 43 S. Ct. 238, 67 L. Ed. 456, was a case which, involving a statute imposing a condition "easily complied with" (p. 681, official report), and a remedial change not "intimate in its relation" (id.) with the contract, was constitutional.

Hooker v. Burr (1904), 194 U. S. 415, 24 S. Ct. 706, 48 L. Ed. 1046. Whether a case falls on one side or the other of any such distinction as this case seems to make, is absolutely immaterial in connection with a consideration of the police power. The contracts of mortgagees and those of purchasers are alike inherently subject to the power. Under this power, the time of redemption can be extended against either the mortgagee or the purchaser, and any right of either affected in any way, for promotion of the general welfare in time of emergency.

Hollister v. Donahoe (1899), 11 S. Dak. 197, 78 N. W. 959, is not on its face a police-power or emergency-statute case. When normal conditions obtain, a legislature can no more impair the obligation of mortgage by extending the redemption period one year or even one week than by extending it five years, but to meet a public emergency the legislature can enlarge the period to any extent that may, within the bounds of reason, be deemed for the public good.

Rosier v. Hale (1860), 10 Iowa 470, speaks of an emergency but makes no allusion to the police power.

In *Maloney v. Fortune* (1860), 14 Iowa 417, there is no mention of the police power and counsel for appellant "do not ask us to listen to a suggestion from them in favor of their position" (see p. 420).

Whatever the reasoning behind these state decisions, they must, so far as they concern the contract clause of the fed-

eral constitution, yield to the principles announced in the recent decisions of this court.

The question with regard to the statute is not whether the remedy it affords impairs the obligation of contract, but whether its impairment of such obligation is repugnant to constitutional provisions. To be of value on the latter question, cases must concern the exercise of the police power, particularly the exercise thereof in the face of some detriment or threat to the public welfare. Moreover, although a case may stand for any proposition which may be reasonably deduced from an application of the decision of the case to the facts thereof, the omission, from the opinion in the case, of any mention of the proposition or any reason to sustain it, weakens the force of the proposition. The function of an opinion is to state the reasons for a decision.

IV.

The statute is not repugnant to the due process clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

A. A significant thing about the power called the police power is, that we seldom refer to the power by that name or attempt to justify anything under it unless it is exercised in a way to deprive a person of something which he deems to be his under the aegis of the law. It would seem to be of the very essence of the police power that it may, in a proper case, for the sake of the general welfare, destroy or modify contracts, judgments, land or interests in land, chattels or interests therein, and rights of action, and act upon vested as well as upon contingent rights.

The letter of a due process clause, like that of a contract clause, yields to considerations of general welfare, and the police power of a state may override both the letter of the

due process clause of the constitution of the state and the letter of the due process clause of the federal constitution, nor does either the federal or the state constitution limit the subjects on which the state may exercise the power.

See 3 Words and Phrases, p. 2253.

Recent cases:

Chapman v. Boynton, 4 Fed. Supp. 43, 46, citing several decisions of the Supreme Court of the United States;

Graham v. Kingwell (Cal.), 24 Pac. (2d) 488, 489.

"Const. U. S. art 1, sec. 10, prohibiting impairment of obligations of contract, and due process and equal process and equal protection clauses of 14th amendment do not extend to subjects affecting general welfare of public."

Third Dec. Dig., Constitutional Law, sec. 253.

"The constitutional guaranties that no person shall be deprived of life, liberty or property without due process of law, do not limit, and were not intended to limit, the subjects on which the police power of a state may lawfully be exerted."

12 C. J., Constitutional Law, sec. 962, citing numerous United States Supreme Court and other decisions.

"* * * The legislative or police power is a dynamic agency, vague and undefined in its scope, which takes private property or limits its use when great public needs require, uncontrolled by the great constitutional requirement of due process. Either the rights of property and contract must when necessary yield to the public convenience, advantage, and welfare, or it must be found that the state has surrendered one of the attributes of sovereignty for which governments are founded, and made itself powerless to secure to its citizens the blessings of freedom and to promote the general welfare."

People v. La Fetra (1921), 230 N. Y. 429, 130 N. E. 601, 605-6.

After citing *Block v. Hirsch* (1921), 256 U. S. 135, 41 S. Ct. 458, 16 A. L. R. 165 and certain cases therein cited (*Strickley v. Highland Boy Gold Mining Co.*, 200 U. S. 527; *Welch v. Swasey*, 214 U. S. 91; *Plymouth Coal Co. v. Pennsylvania*, 232 U. S. 531; *St. Louis Poster Advertising Co. v. St. Louis*, 249 U. S. 269; *Perley v. North Carolina*, 249 U. S. 510), Mr. Justice Clarke, in *Edgar A. Levy Leasing Co. v. Siegel*, 258 U. S. 242, 247, says:

> "These authorities show that from time to time for a generation as occasion arose, this court has held that there is no such inherent difference in property in land, from that in tangible and intangible personal property, as exempts it from the operation of the police power in appropriate cases, * * *."

See also:

Marcus Brown Holding Co. v. Feldman, supra, 256 U. S. 170;

Union Dry Goods Co. v. Georgia Public Service Corp. supra, 248 U. S. 372;

Atlantic Coast Line Rd. Co. v. Goldsboro, supra, (232 U. S. 548, 558).

B. All property is held subject to the possibility that under the police power it may be affected in a manner contrary to the letter of the due process clause. Every contract or property right, whether vested or not, is inherently subject to the possibility.

Hubbell v. Higgins (1910), 148 Iowa 36, 126 N. W. 914, Ann. Cas. 1912, B 822;

Martin v. Blattner (1886), 68 Iowa 286, 289, 295, 25 N. W. 131, 133, 135, 27 N. W. 244.

Recent case: *City of Butte v. Roberts* (Mont.), 23 Pac. (2d) 342.

"These guaranties have never been construed as being incompatible with the principle, equally vital, because essential to peace and safety, that all property is held under the implied obligation that the owner's use of it shall not be injurious to the community."

12 C. J., Constitutional Law, sec. 962.

The police power "is subject to and part of government itself, and need not be expressly reserved, when it grants rights of property to individuals or corporate bodies, as they take subservient to that right."

Chicago, Burlington & Quincy Ry. Co. v. People, supra, (200 U. S. 561, 588).
See also *Mugler v. Kansas,* (1887), 123 U. S. 623, 8 S. Ct. 273, 31 L. Ed. 205.

Attention is called to the quotation, in III B of this Argument, from *Atlantic Coast Line Rd. Co. v Goldsboro.*

C. So far-reaching is the police power in its relation to the due process clause that notwithstanding this clause a person may, under the power, be deprived of property without compensation.

After citing several United States Supreme Court cases, Mr. Justice Holmes, in *Block v. Hirsch, supra,* (256 U. S. 135), says, at 156:

"These cases are enough to establish that a public exigency will justify the legislature in restricting property rights in land to a certain extent without compensation."

In *Atlantic Coast Line Rd. Co. v. Goldsboro, supra,* (232 U. S. 548), Mr. Justice Pitney, at 558, after citing cases to support the statement that all property rights are held subject to the police power, says:

"And the enforcement of uncompensated obedience

to a regulation established under this power for the public health or safety is not an unconstitutional taking of property without compensation or without due process of law. *Chicago, Burlington & Quincy Railroad v. Chicago*, 166 U. S. 226, 255; *New Orleans Gas Co. v. Drainage Commissioners*, 197 U.S. 453, 462; *C. B. & Q. Ry. v. Drainage Commissioners*, 200 U. S. 561, 591, 592."

In *Hamilton v. Kentucky Distilleries Co., supra*, (251 U. S. 146), the court turned down the contention (see p. 115) that Congress could not, as a wartime measure, take property without compensation, saying (156) that in a proper case a state may, under the police power, take private property without compensation; and citing (middle of 157) *Mugler v. Kansas*, 123 U. S. 623, 668, *and Kidd v. Pearson*, 128 U. S. 1, 23.

See also *Edgar A. Levy Leasing Co. v. Siegel, supra*, (258 U. S. 242, 247).

D. Numerous cases concerning vested or property rights and due process clauses are neither police-power nor emergency-provision cases.

Norris v. Tripp (1900), 111 Iowa 115, 82 N. W. 610;
Brinton v. Seevers (1861), 12 Iowa 389;
Hoyt Metal Co. v. Atwood (1923), 289 Fed. 453;
Arnold & Murdock Co. v. Industrial Commission (1921), 314 Ill. 251, 145 N. E. 342;
Roche v. Waters, 72 Md. 24, 19 Atl. 235, 72 L. R. A. 533;
Gladney v. Sydnor (1903), 172 Mo. 318, 72 S. W. 554;
Crump v. Guyer (1916), 60 Okla. 222, 157 Pac. 321, 2 A. L. R. 331;
Tufts v. Tufts (1892), 8 Utah 142, 30 Pac. 309, 16 L. R. A. 482;
Strafford v. Sharon (1889), 61 Vt. 126, 17 Atl. 793, 18 Atl. 308, 4 L. R. A. 499 (police powers discussed in dissenting opinion in 18 Atl.);
Pinkum v. City of Eau Claire (1892), 81 Wis. 301, 51 N. W. 550.

In *Edworthy v. Iowa Savings & Loan Assn.* (1901), 114 Iowa 220, 225, 86 N. W. 315, the court expressly disclaimed that its decision rested upon a consideration of the police power; moreover, the case did not involve emergency legislation.

Bottdorf v. Lewis (1903), 121 Iowa 27, 95 N. W. 26, does not consider the due process clause in its relation to the police power. It is difficult to conceive how a statute assuming to modify existing dower rights could ever be sufficiently for the public interest to warrant upholding it in the face of the due process clauses, but if, conceivably, such a statute could sufficiently serve the purpose of general welfare, it would be constitutional.

E. In connection with the relation between the police power and due process, as well as in connection with the relation between that power and the impairment of the obligation of contracts or the denial of the equal protection of the laws, the degree to which legislation will promote general welfare must be weighed against the public effect of adhering to the letter of the organic law, and the question answered whether the legislation manifests a merely arbitrary attempt to supervene the letter.

> " 'The inquiry must be whether, considering the end in view, the statute passes the bounds of reason and assumes the character of a merely arbitrary fiat.' "
>
> *State v. Bassett* (1924), 100 Conn. 430, 123 Atl. 842, 37 A. L. R. 131, quoting *Purity Extract and Tonic Co. v. Lynch* (1912), 226 U. S. 192, 204, 33 S. Ct. 44, 57 L. Ed. 184.

F. Although the legislature could, under the police power, for the public benefit, deprive appellant and others of property without due process of law, the legislature has not deprived appellant of anything whatsoever without such process.

Perhaps no such definition of due process as can satisfy a scientifically accurate mind can ever be framed, but, generally speaking, the gist of due process in a given case is an opportunity, upon proper notice, to have one's day in court —a hearing—such notice and hearing to be according to laws applicable in all other like cases, and the laws as applied to the facts of such other cases to be applied likewise to the facts of the given case.

3 Words and Phrases, pp. 2352 and 2243;
2 Words and Phrases, (2d series), pp. 170 and 175;
3 Words and Phrases, (3d series), pp. 63 and 67;
1 Words and Phrases (4th series), pp. 813 and 815.

And see the following recent cases:

City of Coral Gables v. Certain Lands (Fla.), 149 So. 36, 37;
Winter v. Barrett (Ill.), 186 N. E. 113, 124.

But—

"* * * What would be due process of law if done under the police power or taxing power might not be, and in many cases would not be, if not done under either of these powers."

State v. Sponaugle, 45 W. Va. 415, 32 S. E. 283, 284, 43 L. R. A. 727.

And see:

3 Words and Phrases, p. 2227;
2 Words and Phrases (2d series), p. 167.

It can not be seriously argued that if the Minnesota statute deprives the appellant of property, the statute so deprives the appellant without a hearing upon proper notice, or that such notice and hearing have not been according to the laws applicable in other like cases coming within the purview of the statute, or that the courts have applied to the facts of the case at bar any other or different laws

than those courts apply to the facts of such other cases, or have applied those laws in any manner in which those courts do not apply them in all other cases like the one at bar.

G. A redemption law is "favorable to the rights of property."

Gault's Appeal (1859), 33 Pa. 94, 98

The law favors the redemption of property.

Caro v. Wollenberg (1913), 68 Ore. 420, 136 Pac. 866, 869.

"Redemption is the last chance of the citizen to recover his rights of property, and yet, it is here, at the point of the owner's extremity, the appellant's argument would have us apply strictness of construction to a statute made for the owner's relief."

Gault's Appeal, supra, (33 Pa. 94, 98).

Decisions contra the decision in *Gault's Appeal* do not necessarily imply dissent with the foregoing statement. *Rott v. Steffen* (1924), 229 Mich. 241, 201 N. W. 227 (see 230) and other nonemergency cases do not point directly to the statement and condemn it. Moreover, in the case at bar, in time of emergency, the statement may assume point and significance it may not possess is nonemergency times and cases. However, the statement may be true even in ordinary times. *Gault's Appeal* may be right, at least as far as the statement in question is concerned, and *Rott v. Steffen,* if it be deemed to challenge the statement, may be wrong.

Land having always been and still being a favorite subject in the eyes of the law, it follows that, if the law favors the redemption of property, the law particularly favors the redemption of land, and that the redemption of land, in the interest of the general welfare, is therefore an especially appropriate object of the exercise of the police power.

V.

The statute is not repugnant to the equal protection clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

A. Let us suppose for a moment that the statute is an example of class legislation, contravening the letter of the equal protection clause of the federal constitution. If the letter of the contract clause and the letter of the due process clause must yield to the exigencies of general welfare, why should not the letter of the equal protection clause, also, yield to such exigencies? Then the statute, even if it is class legislation, is not unconstitutional. No reason can be given why the contract clause and the due process clause but not the equal protection clause shall yield the letter to the spirit of the organic law.

The police power *can* prevail over the equal protection clause.

> "The equal protection clause Const. U. S. Amend 14 does not take from the states power to classify in adoption of police laws, but permits wide discretion and avoids what is done only when it is without reasonable basis."
>
> Third Dec. Dig., Constitutional Law, sec. 212.

> "Const. U. S. art. 1, sec. 10, prohibiting impairment of obligation of contract, and due process and equal protection clauses of 14th amendment do not extend to subjects affecting general welfare of public."
>
> Third Dec. Dig., Constitutional Law, sec. 117.
> And see 12 C. J., Constitutional Law, sec. 894.

> "It is well understood that those provisions of the Constitution do not apply to laws enacted by a state Legislature in the exercise of its police power. *Powell*

v. Pennsylvania, 127 U. S. 678, 8 S. Ct. 992, 1257, 32 L. Ed. 253."

Fisher Flouring Mills Co. v. Brown (1924), 109 Wash. 680, 187 Pac. 399, 403, speaking of equal protection clauses and due process.

And see: *Barbier v. Connolly* (1884), 113 U. S. 27, 31.

If, conceivably, the general welfare, in time of emergency, could be more protected by class legislation, with consequent denial of equal protection, than by adherence to the mere letter of a clause, the legislation could be justified under the police power.

In this connection it is to be remembered that the statute was not enacted primarily for the benefit of certain mortgagors, but primarily for the benefit of society as a whole —not for the welfare of a class, but for the common, public, or general, welfare. It was passed to relieve society in its entirety from certain social, economic and political dangers incident to the predicament of numerous members of that society.

B. The statute is *not* class legislation.

There is neither unjust discrimination nor the denial of equal protection in a statute applicable to all alike who are in the same situation or the same natural classification.

Barbier v. Connolly, supra, (113 U. S. 27, 32).

Recent case: *Town of Green River v. Fuller Brush Co.,* 65 F (2d) 112, 114-5, citing several decisions of the Supreme Court of the United States.

Recent case: *State v. Darling* (Iowa), 246 N. W. 390.

What rights, privileges or immunities does the statute confer upon any citizen which it does not, *upon the same terms,* confer upon any other citizen? May not the rights, privileges or immunities obtainable under the statute be obtained by *all* citizens who are mortgagors such as the statute

describes?. Does it provide that some mortgagors of a certain description shall have certain rights, privileges or immunities that other mortgagors of the same description shall not have? Or that one class of persons (for example, females, adults or whites) shall have certain rights, privileges or immunities under the statute, but other classes of persons (for example, males, children or blacks) shall not?

No law can be framed that does not make, in a sense, a class of these qualified by the terms of the law to take advantage of it.

If the statute embraced an arbitrary classification of debtors, it would work a corresponding arbitrary discrimination among creditors, and deny to those discriminated against the equal protection of the laws. But the statute, embracing no such classification, works no such discrimination, nor does it operate against the appellant in any manner in which it does not or would not operate against any other creditor whose debtor's case is within the provisions of the act.

C. Reasonable classification has never been held unconstitutional. The courts have habitually trenched upon the letter of the equal protection clause—have habitually construed it in the light of the purpose of fundamental law and not according to the strict letter—by holding that it does not condemn reasonable classification.

> "When a statute is attacked for discrimination or unreasonable classification doubts are resolved in its favor and it is presumed that the Legislature acts from proper motives in classifying for legislative purposes, and its classification will not be disturbed unless it is manifestly arbitrary and involved."
>
> Third Dec. Dig., Constitutional Law, sec. 48 (see p. 474).

The equal protection clause does not prevent reasonable classification.

Recent case: *Little v. American State Bank* (Mich.), 249 N. W. 22, 23.

Classification, if reasonable, remains an exclusive legislative function.

Wayne Township v. Brown (Ind.), 186 N. E. 841, 850.

And if a state of facts can be reasonably conceived that will sustain the classification, the existence of such state of facts is assumed.

Recent case: *State v. Superior Court* (Wash.), 24 Pac. (2d) 87, 88.

The principles by which to determine whether a statute makes an arbitrary classification and thus offends against the equal-protection clause, have been stated thus:

> "1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary. *Bachtel v. Wilson*, 204 U. S. 36, 41; *Louisville & Nashville R. R. Co. v. Melton*, 218 U. S. 36; *Ozan Lumber Co. v. Union County Bank*, 207 U. S. 251, 256; *Munn v. Illinois*, 94 U. S. 113, 132; *Henderson Bridge Co. v. Henderson City*, 173 U. S. 592, 615."

Lindsley v. Natural Carbonic Gas. Co. (1911), 220 U. S. 61, 78, 55 L. Ed. 369, 31 S. Ct. 337, Ann. Cas. 1912 C, 160.

D. If, in behalf of the general welfare, legislation touches a certain field, the legislation need not cover the whole field in order not to offend against the equal protection clause.

It is immaterial, on the question of the constitutionality of the statute here considered, that the Minnesota legislature has fallen far short of affording relief to all debtors or even to all property-owners whom the depression has affected or even, perhaps, to all mortgagors of land. It is obvious that if the constitutionality of an act designed for the relief of mortgages of real estate depended upon whether it relieved all such mortgagors in any and all circumstances, legislatures would act at great peril in passing any measure whatever whereby to promote the general welfare through relief of mortgagors of realty. And if such a measure were unconstitutional because it does not afford any relief to debtors other than those whose real estate is mortgaged as security for their debts, no law for the relief of debtors, short of a law providing a general moratorium, could be constitutional, because no legislature could draw the line, between constitutionality and unconstitutionality, anywhere between relief, entire or partial, to certain classes of debtors and all-inclusive relief to all debtors whomsoever. Debts and debtors may undoubtedly be classified in various reasonable ways. Moreover, it does not follow that because a given classification is reasonable a further classification—a second within the first (even a third within the second, a fourth within the third, and so on)—is unreasonable. For instance, if it is reasonable, in the public interest, to relieve all who have bound property as security for debts, it is not

unreasonable to distinguish between those who have thus bound realty and those who have thus bound personalty. If, further, it is reasonable to relieve all who have thus bound personal property, it may not be unreasonable to distinguish between those who have made pledges and those who have given chattel mortgages, or between those who, on the one hand, have mortgaged cattle and those who have bound other property, or those who have pledged stocks or bonds and those who have bound other things. Likewise, if it is reasonable to relieve all who may lose their interests in land because they owe for it or have put it up as security, it may not be unreasonable to distinguish between those who have mortgaged land and those who have bought it on conditional sale, between those whose lands are subject to mortgage lien and those whose lands are subject to judgment lien, or between those whose lands have been sold under foreclosure and those whose lands have been sold under general execution. The statute did not create these distinctions. They exist in the very nature of things, like the distinction between secured and unsecured debts, that between debtors who have been sued and those who have not, that between debtors who have become judgment debtors and those who have not, and that between the lien of a real estate mortgage and a lien of some other description, instance a mechanic's lien, the lien of a chattel mortgage or the lien of a general execution. These distinctions so exist in the very nature of our legal system that they can not be abolished without the very abolition of debts, liens and actions. In the face of these facts it can not be successfully contended that the statute is class legislation. As the cases above cited indicate, class legislation is legislation that favors or oppresses a class which it arbitrarily creates, else does not act uniformly or upon all alike who may be grouped together according to some natural and reasonable classification.

The mortgagors entitled to the benefit of the statute are reasonably and naturally (i. e., nonarbitrarily and in the nature of things) in a separate class, and upon all who belong to it the statute acts equally and uniformly. Even if the classification were arbitrary, and the operation of the statute unequal, the statute could not be condemned as unconstitutional if, in emergency, it were necessary to the public welfare.

> "* * * It is well settled that the legislature of a State may (in the absence of other controlling provisions) direct its police regulations against what it deems an existing evil, without covering the whole field of possible abuses. *Lindsley v. Natural Carbonic Gas Co.*, 220 U. S. 61, 81; *Missouri Pac. Ry. Co. v. Mackey*, 127 U. S. 205. If the legislature finds that a particular instrument of trade war is being used against a policy which it deems wise to adopt, it may direct its legislation specifically and solely against that instrument. *Central Lumber Co. v. South Dakota, supra*, (226 U. S. 157) p. 160. If it finds that the instrument is used only under certain conditions, or by a particular class of concerns, it may limit its prohibition to the conditions and the concerns which it concludes alone menace what it deems the public welfare. * * *"
>
> *Farmer and Merchants Bank v. Federal Reserve Bank* (1923), 262 U. S. 649, 661, 43 S. Ct. 651, 67 L. Ed. 1157, 30 A. L. R. 635.

And see:

City of New Orleans v. LeBlanc (1920), 139 La. 113, 71 so. 248;

State v. Winchell & Rosenthal (1920), 147 La. 781, 86 So. 181; (1922), 258 U. S. 605, 66 L. Ed. 786, S. Ct. 313 (writ of error dismissed);

West v. City of Asbury, 89 N. J. Law 402; 99 Atl. 190;

Hughes v. City of Detroit (1922), 217 Mich. 567, 187 N. W. 530;

Miller v. City of Niagara Falls (1924), 202 N. Y. Supp. 594, 207 App. Div. 798.

"That the legislature directs its police regulations against what it deems an existing evil, without covering the whole field of possible abuses, does not render its action obnoxious to the equal protection clause of the Federal Constitution; * * *."

2 Cooley, Constitutional Limitations (8th ed.), p. 1231.

"* * * regulation is not violative of the equal protection clause merely because it is not all-embracing. *Adams v. Milwaukee*, 228 U. S. 572, 57 L. Ed. 971, 33 S. Ct. 610; *Miller v. Wilson*, 236 U. S. 373, 384, 59 L. Ed. 628, 632, L. R. A. 1915 F, 829, 35 S. Ct. 342."

Zucht v. King (1922), 260 U. S. 174, 177, 43 S. Ct. 24, 67 L. Ed. 194.

E. A fact that may not be without some significance is, that in the many cases in which the constitutionality of legislation similar to that here involved has been drawn into question, the claim that such legislation impairs the obligation of contract has frequently been made, and likewise the claim that it denies due process of law, but seldom the claim that it denies the equal protection of the laws.

Cases like *State v. Loomis* (1893), 115 Mo. 307, 22 S. W. 350, 21 L. R. A. 789, and *Vanzant v. Waddel* (1829), 10 Tenn. (2 Yerg.) 259, in which emergency legislation is not involved or in which the police power receives little or no consideration, have little force in connection with the question whether Chapter 339, Laws of 1933 of Minnesota, is class legislation, denying to any person or persons the equal protection of the laws.

F. The legislature is the first judge of whether a classification is reasonable. The legislature has a wide discretion in the matter of classification.

Lindsley v. Natural Carbonic Gas Co., supra, (220 U. S. 61, 78).

Recent Case: *State v. Darling* (Iowa), 246 N. W. 390.

It has even been said that special legislation is permissible when "designed to meet a temporary emergency in a particular locality or in regard to a particular person, * * * ."

Platt v. Craig (1902), 66 Ohio St. 75, 63 N. E. 594, 596.

It would seem that where the legislature is striving to meet an emergency, the bounds of its discretion enlarge; the greater the emergency, the wider the discretion.

Respectfully submitted,

VERNON A. VROOMAN.

Supreme Court of the United States

OCTOBER TERM, 1933.

No. 670.

HOME BUILDING AND LOAN ASSOCIATION,

Appellant,

vs.

JOHN H. BLAISDELL AND ROSELLA BLAISDELL, HIS WIFE,

Appellees.

PETITION FOR REHEARING.

Comes now the above mentioned appellant, Home Building and Loan Association, and presents this, its petition for a rehearing of the above entitled cause, and in support thereof respectfully shows:

1. That a careful study of the opinion of this Court shows that the majority opinion is based primarily on an assumption of facts which are not the true facts in the cause, because:

(a) Appellees argued and in a great measure presented facts entirely outside the record and hence not a part of the cause and not properly before the Court.

(b) That on material points said argument was erroneous, only partially true, partially untrue and misleading.

(c) That specifically as to the quotation of the Attorney General in Note 4 of the majority opinion of this Court, the

contents of said quotation is partially untrue and only partially true and, on the whole, misleading. That appellant was afforded no opportunity to reply thereto or to challenge the truth of those parts not true or to call attention to those parts misleading. That no basis for said statements are in the record. That the Attorney General, in connection with the statements quoted and following the same, stated also, in substance, that in some counties in Minnesota no mortgage foreclosure sale had not been permitted for many months prior to the hearing through the action of riotous mobs; that said statement is not true in fact, not in the record and that appellant had no opportunity to challenge the same; that appellant believes that said statement is the statement referred to in the last sentence of said Note 4, which sentence is not a quotation.

2. That on the oral argument, the appellant had no opportunity, because of lack of time, to deny, refute or clarify the foregoing matters. That if time had been available, appellant would have presented argument to show:

(a) That appellees' argument and statement of facts was largely outside the record, particularly as to the statement of conditions, existence of emergency, etc.

(b) That said portion of appellees' argument was erroneous and misleading and is denied by the appellant.

(c) That the true basis for the trial court's order requiring the payment of $40.00 per month was not as stated by counsel for the appellees on oral argument. That such payments are not consideration, either adequate or partial, for the extended time granted, because the payments of rental value are applied on the payment of taxes, insurance interest and mortgage indebtedness. The payment of taxes

and insurance are required by law in order to redeem (See Statute 9648 in Appendix A, *infra*), and the payment of mortgage indebtedness and interest are required by the statute, Section 9626 (Appellant's Brief, Appendix D, p. 56). It follows that the payments of rental value are not in addition to, but only a part of, the redemption money. That, therefore, Chapter 339 gives nothing to the mortgagee after the extension other than he would have gotten if the extension had been arbitrary and without any conditions as in the "prior cases" if there is a redemption and hence this case cannot be distinguished from the prior cases cited in the appellant's brief and relied upon by the appellant, and is controlled by these cases, and that, therefore, the decision below should be reversed.

3. It is apparent that for the same reasons the opinion of the majority assumes that said Chapter 339 is beneficial to the public welfare as claimed by the Legislature. That such claim and belief are actually contrary to the opinions of officials of the United States Government in control of emergency agencies and activities designed to cure and alleviate the depression, namely: the Chairman of the Board of the Reconstruction Finance Corporation and the President of the Home Owners Loan Corporation. Within the last ten days both these officials have publicly asserted that moratory legislation of the type of Chapter 339 is retarding the recovery and the refinancing of real estate mortgage loans by private lenders. That the opinions of these officials of the federal government are entitled to the same weight as were the reports and bulletins of the Department of Agriculture of the United States which were cited and used in *Price vs. Illinois* (1915), 238 U. S. 446, 35 S. Ct. 892, 59 L. Ed. 1400. These statements by these officials had

not been made at the time of the oral argument herein, but they are beyond any dispute. That moratory legislation is detrimental to the public welfare is established by the prior decisions of this Court cited and relied on by the appellant.

4. That with additional time for argument, on a rehearing, all of the above matters could and would be adequately presented by the appellant. That such a true and fully developed presentation of the actual facts would be of real value to the Court, and in our opinion, on the basis thereof, this Court might well determine that the judgment below should be reversed.

For the foregoing reasons, it is respectfully urged that this petition for a rehearing be granted, and that the judgment of the Supreme Court of the state of Minnesota be, upon further consideration, reversed.

Respectfully submitted,

ALFRED W. BOWEN,
KARL H. COVELL,
Counsel for Appellant.

CERTIFICATE OF COUNSEL.

We, Alfred W. Bowen and Karl H. Covell, Counsel for the above named appellant, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

ALFRED W. BOWEN,
KARL H. COVELL,
Counsel for Appellant.

APPENDIX "A."

9648. *Purchaser at foreclosure, execution or judicial sale may pay taxes, assessments, insurance premiums, or interest.*—The purchaser at any sale, upon foreclosure of mortgage or execution or at any judicial sale during the year of redemption, may pay any taxes or assessments on which any penalty would otherwise accrue, and may pay the premium upon any policy of insurance procured in renewal of any expiring policy upon mortgaged premises, and may in case any interest or installment of principal upon any prior or superior mortgage is in default or shall become due during such year of redemption, pay the same, and in all such cases, the sum so paid, with interest, shall be a part of the sum required to be paid to redeem from such sale. Such payments shall be proved by the affidavit of the purchaser, his agent or attorney, stating the items and describing the premises, which must be filed for record with the register of deeds, and a copy thereof shall be furnished to the sheriff at least ten days before the expiration of the year of redemption.

REPRINT

SUPREME COURT OF THE UNITED STATES.

No. 370.—October Term, 1933.

Home Building and Loan Association, Appellant, *vs.* John H. Blaisdell and Rosella Blaisdell, his wife.	Appeal from the Supreme Court of the State of Minnesota.

[January 8, 1934.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

Appellant contests the validity of Chapter 339 of the Laws of Minnesota of 1933, p. 514, approved April 18, 1933, called the Minnesota Mortgage Moratorium Law, as being repugnant to the contract clause (Art. I, sec. 10) and the due process and equal protection clauses of the Fourteenth Amendment, of the Federal Constitution. The statute was sustained by the Supreme Court of Minnesota (249 N. W. 334, 893) and the case comes here on appeal.

The Act provides that, during the emergency declared to exist, relief may be had through authorized judicial proceedings with respect to foreclosures of mortgages, and execution sales, of real estate; that sales may be postponed and periods of redemption may be extended. The Act does not apply to mortgages subsequently made nor to those made previously which shall be extended for a period ending more than a year after the passage of the Act (Part One, sec. 8). There are separate provisions in Part Two relating to homesteads, but these are to apply "only to cases not entitled to relief under some valid provision of Part One". The Act is to remain in effect "only during the continuance of the emergency and in no event beyond May 1, 1935". No extension of the period for redemption and no postponement of sale is to be allowed which would have the effect of extending the period of redemption beyond that date. Part Two, sec. 8.

The Act declares that the various provisions for relief are severable; that each is to stand on its own footing with respect to va-

lidity. Part One, sec. 9. We are here concerned with the provisions of Part One, Section 4, authorizing the District Court of the County to extend the period of redemption from foreclosure sales "for such additional time as the court may deem just and equitable," subject to the above described limitation. The extension is to be made upon application to the court, on notice, for an order determining the reasonable value of the income on the property involved in the sale, or if it has no income, then the reasonable rental value of the property, and directing the mortgagor "to pay all or a reasonable part of such income or rental value, in or toward the payment of taxes, insurance, interest, mortgage . . . indebtedness at such times and in such manner" as shall be determined by the court.[1] The section also provides that the time for redemption

[1]That section is as follows:

"Sec. 4. *Period of Redemption May be Extended.*—Where any mortgage upon real property has been foreclosed and the period of redemption has not yet expired, or where a sale is hereafter had, in the case of real estate mortgage foreclosure proceedings, now pending, or which may hereafter be instituted prior to the expiration of two years from and after the passage of this Act, or upon the sale of any real property under any judgment or execution where the period of redemption has not yet expired, or where such sale is made hereafter within two years from and after the passage of this Act, the period of redemption may be extended for such additional time as the court may deem just and equitable but in no event beyond May 1st, 1935; provided that the mortgagor, or the owner in possession of said property, in the case of mortgage foreclosure proceedings, or the judgment debtor, in case of sale under judgment, or execution, shall prior to the expiration of the period of redemption, apply to the district court having jurisdiction of the matter, on not less than 10 days' written notice to the mortgagee or judgment creditor, or the attorney of either, as the case may be, for an order determining the reasonable value of the income on said property, or, if the property has no income, then the reasonable rental value of the property involved in such sale, and directing and requiring such mortgagor or judgment debtor, to pay all or a reasonable part of such income or rental value, in or toward the payment of taxes, insurance, interest, mortgage or judgment indebtedness at such times and in such manner as shall be fixed and determined and ordered by the court; and the court shall thereupon hear said application and after such hearing shall make and file its order directing the payment by such mortgagor, or judgment debtor, of such an amount at such times and in such manner as to the court shall, under all the circumstances, appear just and equitable. Provided that upon the service of the notice or demand aforesaid that the running of the period of redemption shall be tolled until the court shall make its order upon such application.

from foreclosure sales theretofore made, which otherwise would expire less than thirty days after the approval of the Act shall be extended to a date thirty days after its approval, and application may be made to the Court within that time for a further extension as provided in the section. By another provision of the Act, no action, prior to May 1, 1935, may be maintained for a deficiency judgment until the period of redemption as allowed by existing law or as extended under the provisions of the Act has expired. Prior to the expiration of the extended period of redemption the court may revise or alter the terms of the extension as changed circumstances may require. Part One, sec. 5.

Invoking the relevant provision of the statute, appellees applied to the District Court of Hennepin County for an order extending the period of redemption from a foreclosure sale. Their petition stated that they owned a lot in Minneapolis which they had mortgaged to appellant; that the mortgage contained a valid power of sale by advertisement and that by reason of their default the mortgage had been foreclosed and sold to appellant on May 2, 1932, for $3700.98; that appellant was the holder of the

---

Provided, further, however, that if such mortgagor or judgment debtor, or personal representative, shall default in the payments, or any of them, in such order required, on his part to be done, or commits waste, his right to redeem from said sale shall terminate 30 days after such default and holders of subsequent liens may redeem in the order and manner now provided by law beginning 30 days after the filing of notice of such default with the clerk of such District Court, and his right to possession shall cease and the party acquiring title to any such real estate shall then be entitled to the immediate possession of said premises. If default is claimed by allowance of waste, such 30 day period shall not begin to run until the filing of an order of the court finding such waste. Provided, further, that the time of redemption from any real estate mortgage foreclosure or judgment or execution sale heretofore made, which otherwise would expire less than 30 days after the passage and approval of this Act, shall be and the same hereby is extended to a date 30 days after the passage and approval of this Act, and in such case, the mortgagor, or judgment debtor, or the assigns or personal representative of either, as the case may be, or the owner in the possession of the property, may, prior to said date, apply to said court for and the court may thereupon grant the relief as hereinbefore and in this section provided. Provided, further, that prior to May 1, 1935, no action shall be maintained in this state for a deficiency judgment until the period of redemption as allowed by existing law or as extended under the provisions of this Act, has expired".

sheriff's certificate of sale; that because of the economic depression appellees had been unable to obtain a new loan or to redeem and that unless the period of redemption were extended the property would be irretrievably lost; and that the reasonable value of the property greatly exceeded the amount due on the mortgage including all liens, costs and expenses.

On the hearing, appellant objected to the introduction of evidence upon the ground that the statute was invalid under the federal and state constitutions, and moved that the petition be dismissed. The motion was granted and a motion for a new trial was denied. On appeal, the Supreme Court of the State reversed the decision of the District Court. 249 N. W. 334. Evidence was then taken in the trial court and appellant renewed its constitutional objections without avail. The court made findings of fact setting forth the mortgage made by the appellees on August 1, 1928, the power of sale contained in the mortgage, the default and foreclosure by advertisement, and the sale to appellant on May 2, 1932, for $3700.98. The court found that the time to redeem would expire on May 2, 1933, under the laws of the State as they were in effect when the mortgage was made and when it was foreclosed; that the reasonable value of the income on the property, and the reasonable rental value, was $40 a month; that the bid made by appellant on the foreclosure sale, and the purchase price, were the full amount of the mortgage indebtedness, and that there was no deficiency after the sale; that the reasonable present market value of the premises was $6000; and that the total amount of the purchase price, with taxes and insurance premiums subsequently paid by appellant, but exclusive of interest from the date of sale, was $4056.39. The court also found that the property was situated in the closely built-up portions of Minneapolis; that it had been improved by a two-car garage, together with a building two stories in height which was divided into fourteen rooms; that the appellees, husband and wife, occupied the premises as their homestead, occupying three rooms and offering the remaining rooms for rental to others.

The court entered its judgment extending the period of redemption to May 1, 1935, subject to the condition that the appellees should pay to the appellant $40 a month through the extended period from May 2, 1933, that is, that in each of the months of

August, September, and October, 1933, the payments should be $80, in two instalments, and thereafter $40 a month, all these amounts to go to the payment of taxes, insurance, interest, and mortgage indebtedness.[2] It is this judgment, sustained by the Supreme Court of the State on the authority of its former opinion, which is here under review. 249 N. W. 893.

The state court upheld the statute as an emergency measure. Although conceding that the obligations of the mortgage contract were impaired, the court decided that what it thus described as an impairment was, notwithstanding the contract clause of the Federal Constitution, within the police power of the State as that power was called into exercise by the public economic emergency which the legislature had found to exist. Attention is thus directed to the preamble and first section of the statute which described the existing emergency in terms that were deemed to justify the temporary relief which the statute affords.[3] The state court, declaring that it could not say that this legislative finding was without basis, supplemented that finding by its own statement of conditions of which it took judicial notice. The court said:

"In addition to the weight to be given the determination of the legislature that an economic emergency exists which demands relief, the court must take notice of other considerations. The members of the legislature come from every community of the state and

[2] A joint statement of the counsel for both parties, filed with the court on the argument in this Court, shows that, after providing for taxes, insurance, and interest, and crediting the payments to be made by the mortgagor under the judgment, the amount necessary to redeem May 1, 1935, would be $4,258.82.

[3] The preamble and the first section of the Act are as follows:

"Whereas, the severe financial and economic depression existing for several years past has resulted in extremely low prices for the products of the farms and the factories, a great amount of unemployment, an almost complete lack of credit for farmers, business men and property owners and a general and extreme stagnation of business, agriculture and industry, and

"Whereas, many owners of real property, by reason of said conditions, are unable, and it is believed, will for some time be unable to meet all payments as they come due of taxes, interest and principal of mortgages on their properties and are, therefore, threatened with loss of such properties through mortgage foreclosure and judicial sales thereof, and

"Whereas, many such properties have been and are being bid in at mortgage foreclosure and execution sales for prices much below what is believed to be their real values and often for much less than the mortgage or judg-

from all the walks of life. They are familiar with conditions generally in every calling, occupation, profession and business in the state. Not only they, but the courts must be guided by what is common knowledge. It is common knowledge that in the last few years land values have shrunk enormously. Loans made a few years ago upon the basis of the then going values cannot possibly be replaced on the basis of present values. We all know that when this law was enacted the large financial companies, which had made it their business to invest in mortgages, had ceased to do so. No bank would directly or indirectly loan on real estate mortgages. Life insurance companies, large investors in such mortgages, had even declared a moratorium as to the loan provisions of their policy contracts. The President had closed banks temporarily. The Congress, in addition to many extraordinary measures looking to the relief of the economic emergency, had passed an act to supply funds whereby mortgagors may be able within a reasonable time to refinance their mortgages or redeem from sales where the re-

---

ment indebtedness, thus entailing deficiency judgments against the mortgage and judgment debtors, and

"Whereas, it is believed, and the Legislature of Minnesota hereby declares its belief, that the conditions existing as hereinbefore set forth has created an emergency of such nature that justifies and validates legislation for the extension of the time of redemption from mortgage foreclosure and execution sales and other relief of a like character; and

"Whereas, The State of Minnesota possesses the right under its police power to declare a state of emergency to exist, and

"Whereas, the inherent and fundamental purpose of our government is to safeguard the public and promote the general welfare of the people; and

"Whereas, Under existing conditions the foreclosure of many real estate mortgages by advertisement would prevent fair, open and competitive bidding at the time of sale in the manner now contemplated by law, and

"Whereas, It is believed, and the Legislature of Minnesota hereby declares its belief, that the conditions existing as hereinbefore set forth have created an emergency of such a nature that justifies and validates changes in legislation providing for the temporary manner, method, terms and conditions upon which mortgage foreclosure sales may be had or postponed and jurisdiction to administer equitable relief in connection therewith may be conferred upon the District Court, and

"Whereas, Mason's Minnesota Statutes of 1927, Section 9608, which provides for the postponement of mortgage foreclosure sales, has remained for more than thirty years, a provision of the statutes in contemplation of which provisions for foreclosure by advertisement have been agreed upon;"

. . . . . .

"Section 1. *Emergency Declared to Exist.*—In view of the situation hereinbefore set forth, the Legislature of the State of Minnesota hereby declares that a public economic emergency does exist in the State of Minnesota".

demption has not expired. With this knowledge the court cannot well hold that the legislature had no basis in fact for the conclusion that an economic emergency existed which called for the exercise of the police power to grant relief".

Justice Olsen of the state court, in a concurring opinion, added the following:

"The present nation wide and world wide business and financial crisis has the same results as if it were caused by flood, earthquake, or disturbance in nature. It has deprived millions of persons in this nation of their employment and means of earning a living for themselves and their families; it has destroyed the value of and the income from all property on which thousands of people depended for a living; it actually has resulted in the loss of their homes by a number of our people and threatens to result in the loss of their homes by many other people in this state; it has resulted in such widespread want and suffering among our people that private, state and municipal agencies are unable to adequately relieve the want and suffering and congress has found it necessary to step in and attempt to remedy the situation by federal aid. Millions of the people's money were and are yet tied up in closed banks and in business enterprises".[4]

---

[4]The Attorney General of the State in his argument before this court made the following statement of general conditions in Minnesota: "Minnesota is predominantly an agricultural state. A little more than one half of its people live on farms. At the time this law was passed the prices of farm products had fallen to a point where most of the persons engaged in farming could not realize enough from their products to support their families, and pay taxes and interest on the mortgages on their homes. In the fall and winter of 1932 in the villages and small cities where most of the farmers must market their produce, corn was quoted as low as eight cents per bushel, oats two cents and wheat twenty-nine cents per bushel, eggs at seven cents per dozen and butter at ten cents per pound. The industry second in importance is mining. In normal times Minnesota produces about sixty per cent of the iron of the United States and nearly thirty per cent of all the iron produced in the world. In 1932 the production of iron fell to less than fifteen per cent of normal production. The families of idle miners soon became destitute and had to be supported by public funds. Other industries of the state, such as lumbering and the manufacture of wood products, the manufacture of farm machinery and various goods of steel and iron have also been affected disastrously by the depression. Because of the increased burden on the state and its political subdivisions which resulted from the depression, taxes on lands, which provide by far the major portion of the taxes in this state, were increased to such an extent that in many instances they became confiscatory. Tax delinquencies were alarmingly great, rising as high as 78% in one county of the state. In seven counties of the state the tax delinquency was over 50%. Because of these delinquencies many

We approach the questions thus presented upon the assumption made below, as required by the law of the State, that the mortgage contained a valid power of sale to be exercised in case of default; that this power was validly exercised; that under the law then applicable the period of redemption from the sale was one year and that it has been extended by the judgment of the court over the opposition of the mortgagee-purchaser; and that during the period thus extended, and unless the order for extension is modified, the mortgagee-purchaser will be unable to obtain possession, or to obtain or convey title in fee, as he would have been able to do had the statute not been enacted. The statute does not impair the integrity of the mortgage indebtedness. The obligation for interest remains. The statute does not affect the validity of the sale or the right of a mortgagee-purchaser to title in fee, or his right to obtain a deficiency judgment, if the mortgagor fails to redeem within the prescribed period. Aside from the extension of time, the other conditions of redemption are unaltered. While the mortgagor remains in possession he must pay the rental value as that value has been determined, upon notice and hearing, by the court. The rental value so paid is devoted to the carrying of the property by the application of the required payments to taxes, insurance, and interest on the mortgage indebtedness. While the mortgagee-purchaser is debarred from actual possession, he has, so far as rental value is concerned, the equivalent of possession during the extended period.

In determining whether the provision for this temporary and conditional relief exceeds the power of the State by reason of the clause in the Federal Constitution prohibiting impairment of the obligations of contracts, we must consider the relation of emergency to constitutional power, the historical setting of the contract clause, the development of the jurisprudence of this Court in the construction of that clause, and the principles of construction which we may consider to be established.

Emergency does not create power. Emergency does not increase granted power or remove or diminish the restrictions im-

towns, school districts, villages and cities were practically bankrupt. In many of these political subdivisions of the state-local government would have ceased to function and would have collapsed had it not been for loans from the state". The Attorney General also stated that serious breaches of the peace had occurred.

posed upon power granted or reserved. The Constitution was adopted in a period of grave emergency. Its grants of power to the Federal Government and its limitations of the power of the States were determined in the light of emergency and they are not altered by emergency. What power was thus granted and what limitations were thus imposed are questions which have always been, and always will be, the subject of close examination under our constitutional system.

While emergency does not create power, emergency may furnish the occasion for the exercise of power. "Although an emergency may not call into life a power which has never lived, nevertheless emergency may afford a reason for the exertion of a living power already enjoyed". *Wilson* v. *New*, 243 U. S. 332, 348. The constitutional question presented in the light of an emergency is whether the power possessed embraces the particular exercise of it in response to particular conditions. Thus, the war power of the Federal Government is not created by the emergency of war, but it is a power given to meet that emergency. It is a power to wage war successfully and thus it permits the harnessing of the entire energies of the people in a supreme cooperative effort to preserve the nation. But even the war power does not remove constitutional limitations safeguarding essential liberties.[5] When the provisions of the Constitution, in grant or restriction, are specific, so particularized as not to admit of construction, no question is presented. Thus, emergency would not permit a State to have more than two Senators in the Congress, or permit the election of President by a general popular vote without regard to the number of electors to which the States are respectively entitled, or permit the States to "coin money" or to "make anything but gold and silver coin a tender in payment of debts". But where constitutional grants and limitations of power are set forth in general clauses, which afford a broad outline, the process of construction is essential to fill in the details. That is true of the contract clause. The necessity of construction is not obviated by the fact that the contract clause is associated in the same section with other and more specific prohibitions. Even the grouping of subjects in the same

[5]See Ex parte Milligan, 4 Wall. 2, 120-127; United States v. Russell, 13 Wall. 623, 627; Hamilton v. Kentucky Distilleries & Warehouse Co., 251 U. S. 146, 155; United States v. Cohen Grocery Co., 255 U. S. 81, 88.

clause may not require the same application to each of the subjects, regardless of differences in their nature. See *Groves* v. *Slaughter,* 15 Pet. 449, 505; *Atlantic Cleaners & Dyers* v. *United States,* 286 U. S. 427, 434.

In the construction of the contract clause, the debates in the Constitutional Convention are of little aid.[6] But the reasons which led to the adoption of that clause, and of the other prohibitions of Section 10 of Article I, are not left in doubt and have frequently been described with eloquent emphasis.[7] The widespread distress following the revolutionary period and the plight of debtors had called forth in the States an ignoble array of legislative schemes for the defeat of creditors and the invasion of contractual obligations. Legislative interferences had been so numerous and extreme that the confidence essential to prosperous trade had been undermined and the utter destruction of credit was threatened. "The sober people of America" were convinced that some "thorough reform" was needed which would "inspire a general prudence and industry, and give a regular course to the business of society". *The Federalist,* No. 44. It was necessary to interpose the restraining power of a central authority in order to secure the foundations even of "private faith". The occasion and general purpose of the contract clause are summed up in the terse statement of Chief Justice Marshall in *Ogden* v. *Saunders,* 12 Wheat. pp. 213, 354, 355: "The power of changing the relative situation of debtor and creditor, of interfering with contracts, a power which comes home to every man, touches the interest of all, and controls the conduct of every individual in those things which he supposes to be proper for his own exclusive management, had been used to such an excess by the State legislatures, as to break in upon the ordinary intercourse of society, and destroy all confidence between man and

[6]Farrand, Records of the Federal Convention, vol. II, pp. 439, 440, 597, 610; Elliot's Debates, vol. V, pp. 485, 488, 545, 546; Bancroft, History of the U. S. Constitution, vol. 2, pp. 137-139; Warren, The Making of the Constitution, pp. 552-555. Compare Ordinance for the Government of the Northwest Territory, Art. 2.

[7]The Federalist, No. 44 (Madison); Marshall, Life of Washington, vol. 5, pp. 85-90, 112, 113; Bancroft, History of the U. S. Constitution, vol. 1, pp. 228 *et seq.;* Black, Constitutional Prohibitions, pp. 1-7; Fiske, The Critical Period of American History, 8th ed., pp. 168 *et seq.;* Adams v. Storey, 1 Paine's Rep., 79, 90-92.

man. The mischief had become so great, so alarming, as not only to impair commercial intercourse, and threaten the existence of credit, but to sap the morals of the people, and destroy the sanctity of private faith. To guard against the continuance of the evil was an object of deep interest with all the truly wise, as well as the virtuous, of this great community, and was one of the important benefits expected from a reform of the government".

But full recognition of the occasion and general purpose of the clause does not suffice to fix its precise scope. Nor does an examination of the details of prior legislation in the States yield criteria which can be considered controlling. To ascertain the scope of the constitutional prohibition we examine the course of judicial decisions in its application. These put it beyond question that the prohibition is not an absolute one and is not to be read with literal exactness like a mathematical formula. Justice Johnson, in *Ogden* v. *Saunders, supra,* p. 286, adverted to such a misdirected effort in these words: "It appears to me, that a great part of the difficulties of the cause, arise from not giving sufficient weight to the general intent of this clause in the constitution, and subjecting it to a severe literal construction, which would be better adapted to special pleadings". And after giving his view as to the purport of the clause—"that the States shall pass no law, attaching to the acts of individuals other effects or consequences than those attached to them by the laws existing at their date; and all contracts thus construed, shall be enforced according to their just and reasonable purport";—Justice Johnson added: "But to assign to contracts, universally, a literal purport, and to exact for them a rigid literal fulfilment, could not have been the intent of the constitution. It is repelled by a hundred examples. Societies exercise a positive control as well over the inception, construction, and fulfilment of contracts, as over the form and measure of the remedy to enforce them".

The inescapable problems of construction have been: What is a contract?[8] What are the obligations of contracts? What consti-

[8]Contracts, within the meaning of the clause, have been held to embrace those that are executed, that is, grants, as well as those that are executory. Fletcher *v.* Peck, 6 Cranch, 87, 137; Terrett *v.* Taylor, 9 Cranch, 43. They embrace the charters of private corporations. Dartmouth College *v.* Woodward, 4 Wheat. 518. But not the marriage contract, so as to limit the general

tutes impairment of these obligations? What residuum of power is there still in the States, in relation to the operation of contracts, to protect the vital interests of the community? Questions of this character, "of no small nicety and intricacy, have vexed the legislative halls, as well as the judicial tribunals, with an uncounted variety and frequency of litigation and speculation". Story on the Constitution, sec. 1375.

The obligation of a contract is "the law which binds the parties to perform their agreement". *Sturges* v. *Crowninshield,* 4 Wheat. 122, 197; Story, *op. cit.*, sec. 1378. This Court has said that "the laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as if they were expressly referred to or incorporated in its terms. This principle embraces alike those which affect its validity, construction, discharge and enforcement. . . . Nothing can be more material to the obligation than the means of enforcement. . . . The ideas of validity and remedy are inseparable, and both are parts of the obligation, which is guaranteed by the Constitution against invasion". *Von Hoffman* v. *City of Quincy,* 4 Wall. 535, 550, 552. See, also, *Walker* v. *Whitehead,* 16 Wall. 314, 317. But this broad language cannot be taken without qualification. Chief Justice Marshall pointed out the distinction between obligation and remedy. *Sturges* v. *Crowninshield, supra,* p. 200. Said he: "The distinction between the obligation of a contract, and the remedy given by the legislature to enforce that obligation, has been taken at the bar, and exists in the nature of things. Without impairing the obligation of the contract, the remedy may certainly be modified as the wisdom of the nation shall direct". And in *Von Hoffman* v. *City of Quincy, supra,* pp. 553, 554, the general statement above quoted was limited by the further observation that "It is competent for the States to change the form of the remedy, or to modify it otherwise, as they may see fit, provided no substantial right secured by the contract is thereby impaired. No attempt has been made to fix definitely the line between alterations of the remedy, which are to be deemed legitimate, and those which,

right to legislate on the subject of divorce. *Id.*, p. 629; Maynard *v.* Hill, 125 U. S. 190, 210. Nor are judgments, though rendered upon contracts, deemed to be within the provision. Morley *v.* Lake Shore Railway Co., 146 U. S. 162, 169. Nor does a general law, giving the consent of a State to be sued, constitute a contract. Beers *v.* Arkansas, 20 How. 527.

under the form of modifying the remedy, impair substantial rights. Every case must be determined upon its own circumstances". And Chief Justice Waite, quoting this language in *Antoni* v. *Greenhow*, 107 U. S. 769, 775, added: "In all such cases the question becomes therefore, one of reasonableness, and of that the legislature is primarily the judge".

The obligations of a contract are impaired by a law which renders them invalid, or releases or extinguishes them[9] (*Sturges* v. *Crowninshield, supra,* pp. 197, 198) and impairment, as above noted, has been predicated of laws which without destroying contracts derogate from substantial contractual rights.[10] In *Sturges* v. *Crowninshield, supra,* a state insolvent law, which discharged the debtor from liability was held to be invalid as applied to contracts in existence when the law was passed. See *Ogden* v. *Saunders, supra.* In *Green* v. *Biddle,* 8 Wheat. 1, the legislative acts, which were successfully assailed, exempted the occupant of land from the payment of rents and profits to the rightful owner and were "parts of a system the object of which was to compel the rightful owner to relinquish his lands or pay for all lasting improvements made upon them, without his consent or default". In *Bronson* v. *Kinzie,* 1 How. 311, state legislation, which had been enacted for the relief of debtors in view of the seriously depressed condition of business,[11] following the panic of 1837, and which provided that the equitable estate of the mortgagor should not be extinguished for twelve months after sale on foreclosure, and further prevented any sale unless two-thirds of the appraised value of the property should be bid therefor, was held to violate the constitutional provision. It will be observed that in the *Bronson* case, aside from the

[9]But there is held to be no impairment by a law which removes the taint of illegality and thus permits enforcement, as, *e. g.,* by the repeal of a statute making a contract void for usury. Ewell *v.* Daggs, 108 U. S. 143, 151.

[10]See, in addition to cases cited in the text, the following: Farmers & Mechanics' Bank *v.* Smith, 6 Wheat. 131; Piqua Bank *v.* Knoop, 16 How. 369; Dodge *v.* Woolsey, 18 How. 331; Jefferson Branch Bank *v.* Skelly, 1 Black, 436; State Tax on Foreign-held Bonds, 15 Wall. 300; Farrington *v.* Tennessee, 95 U. S. 679; Murray *v.* Charleston, 96 U. S. 432; Hartman *v.* Greenhow, 102 U. S. 672; McGahey *v.* Virginia, 135 U. S. 662; Bedford *v.* Eastern Building & Loan Association, 181 U. S. 227; Wright *v.* Central of Georgia Railway Co., 236 U. S. 674; Central of Georgia Railway Co. *v.* Wright, 248 U. S. 525; Ohio Public Service Co. *v.* Fritz, 274 U. S. 12.

[11]See. Warren, The Supreme Court in United States History, vol. 2, pp. 376-379.

requirement as to the amount of the bid at the sale, the extension of the period of redemption was unconditional, and there was no provision, as in the instant case, to secure to the mortgagee the rental value of the property during the extended period. *McCracken* v. *Hayward,* 2 How. 608, *Gantly's Lessee* v. *Ewing,* 3 How. 707, and *Howard* v. *Bugbee,* 24 How. 461, followed the decision in *Bronson* v. *Kinzie;* that of *McCracken,* condemning a statute which provided that an execution sale should not be made of property unless it would bring two-thirds of its value according to the opinion of three householders; that of *Gantly's Lessee,* condemning a statute which required a sale for not less than one-half the appraised value; and that of *Howard,* making a similar ruling as to an unconditional extension of two years for redemption from foreclosure sale. In *Planters' Bank* v. *Sharp,* 6 How. 301, a state law was found to be invalid which prevented a bank from transferring notes and bills receivable which it had been duly authorized to acquire. In *Von Hoffman* v. *City of Quincy, supra,* a statute which restricted the power of taxation which had previously been given to provide for the payment of municipal bonds was set aside. *Louisiana* v. *Police Jury,* 111 U. S. 716, and *Seibert* v. *Lewis,* 122 U. S. 284 are similar cases. In *Walker* v. *Whitehead,* 16 Wall. 314, the statute, which was held to be repugnant to the contract clause, was enacted in 1870 and provided that in all suits pending on any debt or contract made before June 1, 1865, the plaintiff should not have a verdict unless it appeared that all taxes chargeable by law on the same had been duly paid for each year since the contract was made; and, further, that in all cases of indebtedness of the described class the defendant might offset any losses he had suffered in consequence of the late war either from destruction or depreciation of property. See *Daniels* v. *Tearney,* 102 U. S. 415, 419. In *Gunn* v. *Barry,* 15 Wall, 610, and *Edwards* v. *Kearzey,* 96 U. S. 595, statutes applicable to prior contracts were condemned because of increases in the amount of the property of judgment debtors which were exempted from levy and sale on execution. But, in *Penniman's Case,* 103 U. S. 714, 720, the Court decided that a statute abolishing imprisonment for debt did not, within the meaning of the Constitution, impair the obligation of contracts previously made;[12] and the Court said: "The general doctrine of this court

[12]See Sturges *v.* Crowninshield, 4 Wheat. 122, 200, 201; Mason *v.* Haile, 12 Wheat. 370, 378; Beers *v.* Haughton, 9 Pet. 329, 359.

on this subject may be thus stated: In modes of proceeding and forms to enforce the contract the legislature has the control, and may enlarge, limit or alter them, provided it does not deny a remedy or so embarrass it with conditions or restrictions as seriously to impair the value of the right". In *Barnitz* v. *Beverly,* 163 U. S. 118, the Court held that a statute which authorized the redemption of property sold on foreclosure, where no right of redemption previously existed, or which extended the period of redemption beyond the time formerly allowed, could not constitutionally apply to a sale under a mortgage executed before its passage. This ruling was to the same effect as that in *Bronson* v. *Kinzie, supra,* and *Howard* v. *Bugbee, supra.* But in the *Barnitz* case, the statute contained a provision for the prevention of waste, and authorized the appointment of a receiver of the premises sold. Otherwise the extension of the period for redemption was unconditional, and in case a receiver was appointed, the income during the period allowed for redemption, except what was necessary for repairs and to prevent waste, was still to go to the mortgagor.

None of these cases, and we have cited those upon which appellant chiefly relies, is directly applicable to the question now before us in view of the conditions with which the Minnesota statute seeks to safeguard the interests of the mortgagee-purchaser during the extended period. And broad expressions contained in some of these opinions went beyond the requirements of the decision, and are not controlling. *Cohens* v. *Virginia,* 6 Wheat. 264, 399.

Not only is the constitutional provision qualified by the measure of control which the State retains over remedial proeesses,[13] but the State also continues to possess authority to safeguard the vital interests of its people. It does not matter that legislation appro-

[13]Illustrations of changes in remedies, which have been sustained, may be seen in the following cases: Jackson *v.* Lamphire, 3 Pet. 280; Hawkins *v.* Barney's Lessee, 5 Pet. 457; Crawford *v.* Branch Bank, 7 How. 279; Curtis *v.* Whitney, 13 Wall. 68; Railroad Company *v.* Hecht, 95 U. S. 168; Terry *v.* Anderson, 95 U. S. 628; Tennessee *v.* Sneed, 96 U. S. 69; South Carolina *v.* Gaillard, 101 U. S. 433; Louisiana *v.* New Orleans, 102 U. S. 203; Connecticut Mutual Life Insurance Co. *v.* Cushman, 108 U. S. 51; Vance *v.* Vance, 108 U. S. 514; Gilfillan *v.* Union Canal Co., 109 U. S. 401; Hill *v.* Merchants' Insurance Co., 134 U. S. 515; New Orleans City & Lake R. R. Co. *v.* New Orleans, 157 U. S. 219; Red River Valley Bank *v.* Craig, 181 U. S. 548; Wilson *v.* Standefer, 184 U. S. 399; Oshkosh Waterworks Co. *v.* Oshkosh, 187 U. S. 437; Waggoner *v.* Flack, 188 U. S. 595; Bern-

priate to that end "has the result of modifying or abrogating contracts already in effect". *Stephenson* v. *Binford,* 287 U. S. 251, 276. Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order. The policy of protecting contracts against impairment presupposes the maintenance of a government by virtue of which contractual relations are worth while,—a government which retains adequate authority to secure the peace and good order of society. This principle of harmonizing the constitutional prohibition with the necessary residuum of state power has had progressive recognition in the decisions of this Court.

While the charters of private corporations constitute contracts, a grant of exclusive privilege is not to be implied as against the State. *Charles River Bridge* v. *Warren Bridge,* 11 Pet. 420. And all contracts are subject to the right of eminent domain. *West River Bridge* v. *Dix,* 6 How. 507.[14] The reservation of this necessary authority of the State is deemed to be a part of the contract. In the case last cited, the Court answered the forcible challenge of the State's power by the following statement of the controlling principle,—a statement reiterated by this Court speaking through Mr. Justice Brewer, nearly fifty years later, in *Long Island Water Supply Co.* v. *Brooklyn,* 166 U. S. 685, 692: "But into all contracts, whether made between States and individuals, or between individuals only, there enter conditions which arise not out of the literal terms of the contract itself; they are superinduced by the preexisting and higher authority of the laws of nature, of

heimer *v.* Converse, 206 U. S. 516; Henley *v.* Myers, 215 U. S. 373; Selig *v.* Hamilton, 234 U. S. 652; Security Savings Bank *v.* California, 263 U. S. 282.

Compare the following illustrative cases, where changes in remedies were deemed to be of such a character as to interfere with substantial rights: Wilmington & Weldon R. R. Co. *v.* King, 91 U. S. 3; Memphis *v.* United States, 97 U. S. 293; Virginia Coupon Cases, 114 U. S. 269, 270, 298, 299; Effinger *v.* Kenney, 115 U. S. 566; Fisk *v.* Jefferson Police Jury, 116 U. S. 131; Bradley *v.* Lightcap, 195 U. S. 1; Bank of Minden *v.* Clement, 256 U. S. 126.

[14] See, also, New Orleans Gas Co. *v.* Louisiana Light Co., 115 U. S. 650, 673; Offield *v.* New York, N. H. & H. R. R. Co., 203 U. S. 372; Cincinnati *v.* Louisville & Nashville R. R. Co., 223 U. S. 390; Pennsylvania Hospital *v.* Philadelphia, 245 U. S. 20, 23; Galveston Wharf Company *v.* Galveston, 260 U. S. 473, 476; Georgia *v.* Chattanooga, 264 U. S. 472.

nations or of the community to which the parties belong; they are always presumed, and must be presumed, to be known and recognized by all, are binding upon all, and need never, therefore, be carried into express stipulation, for this could add nothing to their force. Every contract is made in subordination to them, and must yield to their control, as conditions inherent and paramount, wherever a necessity for their execution shall occur".

The legislature cannot "bargain away the public health or the public morals". Thus, the constitutional provision against the impairment of contracts was held not to be violated by an amendment of the state constitution which put an end to a lottery theretofore authorized by the legislature. *Stone* v. *Mississippi,* 101 U. S. 814, 819. See, also, *Douglas* v. *Kentucky,* 168 U. S. 488, 497-499; compare *New Orleans* v. *Houston,* 119 U. S. 265, 275. The lottery was a valid enterprise when established under express state authority, but the legislature in the public interest could put a stop to it. A similar rule has been applied to the control by the State of the sale of intoxicating liquors. *Beer Company* v. *Massachusetts,* 97 U. S. 25, 32, 33; see *Mugler* v. *Kansas,* 123 U. S. 623, 664, 665. The States retain adequate power to protect the public health against the maintenance of nuisances despite insistence upon existing contracts. *Fertilizing Company* v. *Hyde Park,* 97 U. S. 659, 667; *Butchers' Union Company* v. *Crescent City Company,* 111 U. S. 746, 750. Legislation to protect the public safety comes within the same category of reserved power. *Chicago, B. & Q. R. R. Co.* v. *Nebraska,* 170 U. S. 57, 70, 74; *Texas & N. O. R. R. Co.* v. *Miller,* 221 U. S. 408, 414; *Atlantic Coast Line R. R. Co.* v. *Goldsboro,* 232 U. S. 548, 558. This principle has had recent and noteworthy application to the regulation of the use of public highways by common carriers and "contract carriers," where the assertion of interference with existing contract rights has been without avail. *Sproles* v. *Binford,* 286 U. S. 374, 390, 391; *Stephenson* v. *Binford, supra.*

The economic interests of the State may justify the exercise of its continuing and dominant protective power notwithstanding interference with contracts. In *Manigault* v. *Springs,* 199 U. S. 473, riparian owners in South Carolina had made a contract for a clear passage through a creek by the removal of existing obstructions. Later, the legislature of the State, by virtue of its broad

authority to make public improvements, and in order to increase the taxable value of the lowlands which would be drained, authorized the construction of a dam across the creek. The Court sustained the statute upon the ground that the private interests were subservient to the public right. The Court said (*id.*, p. 480): "It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the State from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. This power, which in its various ramifications is known as the police power, is an exercise of the sovereign right of the Government to protect the lives, health, morals, comfort and general welfare of the people, and is paramount to any rights under contracts between individuals". A statute of New Jersey prohibiting the transportation of water of the State into any other State was sustained against the objection that the statute impaired the obligation of contracts which had been made for furnishing such water to persons without the State. *Hudson Water Co.* v. *McCarter*, 209 U. S. 349. Said the Court, by Mr. Justice Holmes (*id.*, p. 357): "One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the State by making a contract about them. The contract will carry with it the infirmity of the subject matter". The general authority of the legislature to regulate, and thus to modify, the rates charged by public service corporations affords another illustration. *Stone* v. *Farmers Loan & Trust Company*, 116 U. S. 307, 325, 326. In *Union Dry Goods Co.* v. *Georgia Public Service Corporation*, 248 U. S. 372, a statute fixing reasonable rates, to be charged by a corporation for supplying electricity to the inhabitants of a city, superseded lower rates which had been agreed upon by a contract previously made for a definite term between the company and a consumer. The validity of the statute was sustained. To the same effect are *Producers Transportation Co.* v. *Railroad Commission*, 251 U. S. 228, 232, and *Sutter Butte Canal Co.* v. *Railroad Commission*, 279 U. S. 125, 138. Similarly, where the protective power of the State is exercised in a manner otherwise appropriate in the regulation of a business it is no objection that the performance of existing contracts may be frustrated by the prohibition of injurious practices. *Rast* v. *Van Deman & Lewis*

Co., 240 U. S. 342, 363; see, also, *St. Louis Poster Advertising Co.* v. *St. Louis*, 249 U. S. 269, 274.

The argument is pressed that in the cases we have cited the obligation of contracts was affected only incidentally. This argument proceeds upon a misconception. The question is not whether the legislative action affects contracts incidentally, or directly or indirectly, but whether the legislation is addressed to a legitimate end and the measures taken are reasonable and appropriate to that end. Another argument, which comes more closely to the point, is that the state power may be addressed directly to the prevention of the enforcement of contracts only when these are of a sort which the legislature in its discretion may denounce as being in themselves hostile to public morals, or public health, safety or welfare, or where the prohibition is merely of injurious practices; that interference with the enforcement of other and valid contracts according to appropriate legal procedure, although the interference is temporary and for a public purpose, is not permissible. This is but to contend that in the latter case the end is not legitimate in the view that it cannot be reconciled with a fair interpretation of the constitutional provision.

Undoubtedly, whatever is reserved of state power must be consistent with the fair intent of the constitutional limitation of that power. The reserved power cannot be construed so as to destroy the limitation, nor is the limitation to be construed to destroy the reserved power in its essential aspects. They must be construed in harmony with each other. This principle precludes a construction which would permit the State to adopt as its policy the repudiation of debts or the destruction of contracts or the denial of means to enforce them. But it does not follow that conditions may not arise in which a temporary restraint of enforcement may be consistent with the spirit and purpose of the constitutional provision and thus be found to be within the range of the reserved power of the State to protect the vital interests of the community. It cannot be maintained that the constitutional prohibition should be so construed as to prevent limited and temporary interpositions with respect to the enforcement of contracts if made necessary by a great public calamity such as fire, flood, or earthquake. See *American Land Co.* v. *Zeiss*, 219 U. S. 47. The reservation of state power appropriate to such extraordinary conditions may be deemed

to be as much a part of all contracts, as is the reservation of state power to protect the public interest in the other situations to which we have referred. And if state power exists to give temporary relief from the enforcement of contracts in the presence of disasters due to physical causes such as fire, flood or earthquake, that power cannot be said to be non-existent when the urgent public need demanding such relief is produced by other and economic causes.

Whatever doubt there may have been that the protective power of the State, its police power, may be exercised—without violating the true intent of the provision of the Federal Constitution—in directly preventing the immediate and literal enforcement of contractual obligations by a temporary and conditional restraint, where vital public interests would otherwise suffer, was removed by our decisions relating to the enforcement of provisions of leases during a period of scarcity of housing. *Block* v. *Hirsh*, 256 U. S. 135; *Marcus Brown Holding Co.* v. *Feldman*, 256 U. S. 170; *Edgar A. Levy Leasing Co.* v. *Siegel*, 258 U. S. 242. The case of *Block* v. *Hirsh*, *supra*, arose in the District of Columbia and involved the due process clause of the Fifth Amendment. The cases of the *Marcus Brown Company* and the *Levy Leasing Company* arose under legislation of New York and the constitutional provision against the impairment of the obligation of contracts was invoked. The statutes of New York,[18] declaring that a public emergency existed, directly interfered with the enforcement of covenants for the surrender of the possession of premises on the expiration of leases. Within the City of New York and contiguous counties, the owners of dwellings, including apartment and tenement houses (but excepting buildings under construction in September, 1920, lodging houses for transients and the larger hotels), were wholly deprived until November 1, 1922, of all possessory remedies for the purpose of removing from their premises the tenants or occupants in possession when the laws took effect (save in certain specified instances) providing the tenants or occupants were ready, able and willing to pay a reasonable rent or price for their use and occupation. *People* v. *La Fetra*, 230 N. Y. 429, 438; *Levy Leasing Co.* v. *Siegel*, *id.*, 634. In the case of the *Marcus Brown Company* the facts were thus stated by the Circuit Court of Ap-

[18] Laws of 1920 (New York), chapters 942-947, 951.

peals (269 Fed. 306, 312): "the tenant defendants herein, by law older than the state of New York, became at the landlord's option trespassers on October 1, 1920. Plaintiff had then found and made a contract with a tenant it liked better, and had done so before these statutes were enacted. By them plaintiff is, after defendants elected to remain in possession, forbidden to carry out his bargain with the tenant he chose, the obligation of the covenant for peaceable surrender by defendants is impaired, and for the next two years Feldman et al. may, if they like, remain in plaintiff's apartment, provided they make good month by month the allegation of their answer, i. e., pay what 'a court of competent jurisdiction' regards as fair and reasonable compensation for such enforced use and occupancy." Answering the contention that the legislation as thus applied contravened the constitutional prohibition, this Court, after referring to its opinion in *Block* v. *Hirsh, supra,* said: "In the present case more emphasis is laid upon the impairment of the obligation of the contract of the lessees to surrender possession and of the new lease which was to have gone into effect upon October 1, last year. But contracts are made subject to this exercise of the power of the State when otherwise justified, as we have held this to be." 256 U. S. p. 198. This decision was followed in the case of the *Levy Leasing Company, supra.*

In these cases of leases, it will be observed that the relief afforded was temporary and conditional; that it was sustained because of the emergency due to scarcity of housing; and that provision was made for reasonable compensation to the landlord during the period he was prevented from regaining possession. The Court also decided that while the declaration by the legislature as to the existence of the emergency was entitled to great respect, it was not conclusive; and, further, that a law "depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change even though valid when passed". It is always open to judicial inquiry whether the exigency still exists upon which the continued operation of the law depends. *Chastleton Corporation* v. *Sinclair,* 264 U. S. 543, 547, 548.

It is manifest from this review of our decisions that there has been a growing appreciation of public needs and of the necessity

of finding ground for a rational compromise between individual rights and public welfare. The settlement and consequent contraction of the public domain, the pressure of a constantly increasing density of population, the interrelation of the activities of our people and the complexity of our economic interests, have inevitably led to an increased use of the organization of society in order to protect the very bases of individual opportunity. Where, in earlier days, it was thought that only the concerns of individuals or of classes were involved, and that those of the State itself were touched only remotely, it has later been found that the fundamental interests of the State are directly affected; and that the question is no longer merely that of one party to a contract as against another, but of the use of reasonable means to safeguard the economic structure upon which the good of all depends.

It is no answer to say that this public need was not apprehended a century ago, or to insist that what the provision of the Constitution meant to the vision of that day it must mean to the vision of our time. If by the statement that what the Constitution meant at the time of its adoption it means to-day, it is intended to say that the great clauses of the Constitution must be confined to the interpretation which the framers, with the conditions and outlook of their time, would have placed upon them, the statement carries its own refutation. It was to guard against such a narrow conception that Chief Justice Marshall uttered the memorable warning—"We must never forget that it is *a constitution* we are expounding" (*McCulloch* v. *Maryland,* 4 Wheat. 316, 407)—"a constitution intended to endure for ages to come, and, consequently, to be adapted to the various *crises* of human affairs". *Id.,* p. 415. When we are dealing with the words of the Constitution, said this Court in *Missouri* v. *Holland,* 252 U. S. 416, 433, "we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. . . . The case before us must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago".

Nor is it helpful to attempt to draw a fine distinction between the intended meaning of the words of the Constitution and their intended application. When we consider the contract clause and the decisions which have expounded it in harmony with the es-

sential reserved power of the States to protect the security of their peoples, we find no warrant for the conclusion that the clause has been warped by these decisions from its proper significance or that the founders of our Government would have interpreted the clause differently had they had occasion to assume that responsibility in the conditions of the later day. The vast body of law which has been developed was unknown to the fathers but it is believed to have preserved the essential content and the spirit of the Constitution. With a growing recognition of public needs and the relation of individual right to public security, the court has sought to prevent the perversion of the clause through its use as an instrument to throttle the capacity of the States to protect their fundamental interests. This development is a growth from the seeds which the fathers planted. It is a development forecast by the prophetic words of Justice Johnson in *Ogden* v. *Saunders*, already quoted. And the germs of the later decisions are found in the early cases of the *Charles River Bridge* and the *West River Bridge*, *supra*, which upheld the public right against strong insistence upon the contract clause. The principle of this development is, as we have seen, that the reservation of the reasonable exercise of the protective power of the State is read into all contracts and there is no greater reason for refusing to apply this principle to Minnesota mortgages than to New York leases.

Applying the criteria established by our decisions we conclude:

1. An emergency existed in Minnesota which furnished a proper occasion for the exercise of the reserved power of the State to protect the vital interests of the community. The declarations of the existence of this emergency by the legislature and by the Supreme Court of Minnesota cannot be regarded as a subterfuge or as lacking in adequate basis. *Block* v. *Hirsh*, *supra*. The finding of the legislature and state court has support in the facts of which we take judicial notice. *Atchison, T. & S. F. Rwy. Co.* v. *United States*, 284 U. S. 248, 260. It is futile to attempt to make a comparative estimate of the seriousness of the emergency shown in the leasing cases from New York and of the emergency disclosed here. The particular facts differ, but that there were in Minnesota conditions urgently demanding relief, if power existed to give it, is beyond cavil. As the Supreme Court of Minnesota said, the economic emergency which threatened "the loss of homes and

lands which furnish those in possession the necessary shelter and means of subsistence" was a "potent cause" for the enactment of the statute.

2. The legislation was addressed to a legitimate end, that is, the legislation was not for the mere advantage of particular individuals but for the protection of a basic interest of society.

3. In view of the nature of the contracts in question—mortgages of unquestionable validity—the relief afforded and justified by the emergency, in order not to contravene the constitutional provision, could only be of a character appropriate to that emergency and could be granted only upon reasonable conditions.

4. The conditions upon which the period of redemption is extended do not appear to be unreasonable. The initial extension of the time of redemption for thirty days from the approval of the Act was obviously to give a reasonable opportunity for the authorized application to the court. As already noted, the integrity of the mortgage indebtedness is not impaired; interest continues to run; the validity of the sale and the right of a mortgagee-purchaser to title or to obtain a deficiency judgment, if the mortgagor fails to redeem within the extended period, are maintained; and the conditions of redemption, if redemption there be, stand as they were under the prior law. The mortgagor during the extended period is not ousted from possession but he must pay the rental value of the premises as ascertained in judicial proceedings and this amount is applied to the carrying of the property and to interest upon the indebtedness. The mortgagee-purchaser during the time that he cannot obtain possession thus is not left without compensation for the withholding of possession. Also important is the fact that mortgagees, as is shown by official reports of which we may take notice, are predominantly corporations, such as insurance companies, banks, and investment and mortgage companies.[16] These, and such individual mortgagees as are small investors, are not seeking homes or the opportunity to engage in farming. Their chief concern is the reasonable protection of their investment security. It does not matter that there are, or may be, individual cases of another aspect. The legislature was entitled to deal with the general or typical situation. The relief afforded by the

[16]Department of Agriculture, Technical Bulletin No. 288, February, 1932, pp. 22, 23; Year Book, Department of Agriculture, 1932, p. 913.

statute has regard to the interest of mortgagees as well as to the interest of mortgagors. The legislation seeks to prevent the impending ruin of both by a considerate measure of relief.

In the absence of legislation, courts of equity have exercised jurisdiction in suits for the foreclosure of mortgages to fix the time and terms of sale and to refuse to confirm sales upon equitable grounds where they were found to be unfair or inadequacy of price was so gross as to shock the conscience.[17] The "equity of redemption" is the creature of equity. While courts of equity could not alter the legal effect of the forfeiture of the estate at common law on breach of condition, they succeeded, operating on the conscience of the mortgagee, in maintaining that it was unreasonable that he should retain for his own benefit what was intended as a mere security; that the breach of condition was in the nature of a penalty, which ought to be relieved against, and that the mortgagor had an equity to redeem on payment of principal, interest and costs, notwithstanding the forfeiture at law. This principle of equity was victorious against the strong opposition of the common law judges, who thought that by "the Growth of Equity on Equity the Heart of the Common Law is eaten out". The equitable principle became firmly established and its application could not be frustrated even by the engagement of the debtor entered into at the time of the mortgage, the courts applying the equitable maxim "once a mortgage, always a mortgage, and nothing but a mortgage".[18] Although the courts would have no authority to alter a statutory period of redemption, the legislation in question permits the courts to extend that period, within limits and upon equitable terms, thus providing a procedure and relief which are cognate to the historic exercise of the equitable jurisdiction.

[17]Graffam *v.* Burgess, 117 U. S. 180, 191, 192; Schroeder *v.* Young, 161 U. S. 334, 337; Ballentyne *v.* Smith, 205 U. S. 285, 290; Howell *v.* Baker, 4 Johns. Ch. 118, 121; Gilbert *v.* Haire, 43 Mich. 283, 286; Littell *v.* Zuntz, 2 Ala. 256, 260, 262; Insurance Co. *v.* Stegink, 106 Kans. 730; Strong *v.* Smith, 68 N. J. Eq. 650, 653. Compare Suring State Bank *v.* Giese, 246 N. W. (Wis.) 556.

[18]See Coote's Law of Mortgages, 8th ed., vol. 1, pp. 11, 12; Jones on Mortgages, 8th ed., vol. 1, secs. 7, 8; Langford *v.* Barnard, Tothill, 134, temp. Eliz.; Emmanuel College *v.* Evans, 1 Rep. in Ch. 10, temp. Car. I; Roscarrick *v.* Barton, 1 Ca. in Ch. 217; Noakes *v.* Rice, (1902) A. C. 24, per Lord Macnaghten; Fairclough *v.* Swan Brewery, 81 L. J. P. C. 207.

If it be determined, as it must be, that the contract clause is not an absolute and utterly unqualified restriction of the State's protective power, this legislation is clearly so reasonable as to be within the legislative competency.

5. The legislation is temporary in operation. It is limited to the exigency which called it forth. While the postponement of the period of redemption from the foreclosure sale is to May 1, 1935, that period may be reduced by the order of the court under the statute, in case of a change in circumstances, and the operation of the statute itself could not validly outlast the emergency or be so extended as virtually to destroy the contracts.

We are of the opinion that the Minnesota statute as here applied does not violate the contract clause of the Federal Constitution. Whether the legislation is wise or unwise as a matter of policy is a question with which we are not concerned.

What has been said on that point is also applicable to the contention presented under the due process clause. *Block* v. *Hirsh, supra.*

Nor do we think that the statute denies to the appellant the equal protection of the laws. The classification which the statute makes cannot be said to be an arbitrary one. *Magoun* v. *Illinois Trust & Savings Bank,* 170 U. S. 283; *Clark* v. *Titusville,* 184 U. S. 329; *Quong Wing* v. *Kirkendall,* 223 U. S. 59; *Ohio Oil Co.* v. *Conway,* 281 U. S. 146; *Sproles* v. *Binford,* 286 U. S. 374.

The judgment of the Supreme Court of Minnesota is affirmed.

Judgment affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 370.—October Term, 1933.

Home Building and Loan Association, Appellant, *vs.* John H. Blaisdell and Rosella Blaisdell, His Wife.	Appeal from the Supreme Court of the State of Minnesota.

[January 8, 1934.]

Mr. Justice Sutherland, dissenting.

Few questions of greater moment than that just decided have been submitted for judicial inquiry during this generation. He simply closes his eyes to the necessary implications of the decision who fails to see in it the potentiality of future gradual but ever-advancing encroachments upon the sanctity of private and public contracts. The effect of the Minnesota legislation, though serious enough in itself, is of trivial significance compared with the far more serious and dangerous inroads upon the limitations of the Constitution which are almost certain to ensue as a consequence naturally following any step beyond the boundaries fixed by that instrument. And those of us who are thus apprehensive of the effect of this decision would, in a matter so important, be neglectful of our duty should we fail to spread upon the permanent records of the court the reasons which move us to the opposite view.

A provision of the Constitution, it is hardly necessary to say, does not admit of two distinctly opposite interpretations. It does not mean one thing at one time and an entirely different thing at another time. If the contract impairment clause, when framed and adopted, meant that the terms of a contract for the payment of money could not be altered *in invitum* by a state statute enacted for the relief of hardly pressed debtors to the end and with the effect of postponing payment or enforcement during and

because of an economic or financial emergency, it is but to state the obvious to say that it means the same now. This view, at once so rational in its application to the written word, and so necessary to the stability of constitutional principles, though from time to time challenged, has never, unless recently, been put within the realm of doubt by the decisions of this court. The true rule was forcefully declared in *Ex parte Milligan*, 4 Wall. 2, 120-121, in the face of circumstances of national peril and public unrest and disturbance far greater than any that exist today. In that great case this court said that the provisions of the Constitution there under consideration had been expressed by our ancestors in such plain English words that it would seem the ingenuity of man could not evade them, but that after the lapse of more than seventy years they were sought to be avoided. "Those great and good men," the court said, "foresaw that troublous times would arise, when rulers and people would become restive under restraint, and seek by sharp and decisive measures to accomplish ends deemed just and proper; and that the principles of constitutional liberty would be in peril, unless established by irrepealable law. The history of the world had taught them that what was done in the past might be attempted in the future." And then, in words the power and truth of which have become increasingly evident with the lapse of time, there was laid down the rule without which the Constitution would cease to be the "supreme law of the land", binding equally upon governments and governed at all times and under all circumstances, and become a mere collection of political maxims to be adhered to or disregarded according to the prevailing sentiment or the legislative and judicial opinion in respect of the supposed necessities of the hour:

"The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government. Such a doctrine leads directly to anarchy or despotism, ..."

Chief Justice Taney, in *Dred Scott* v. *Sandford*, 19 How. 393, 426, said that while the Constitution remains unaltered it must be

construed now as it was understood at the time of its adoption; that it is not only the same in words but the same in meaning, "and as long as it continues to exist in its present form, it speaks not only in the same words, but with the same meaning and intent with which it spoke when it came from the hands of its framers, and was voted on and adopted by the people of the United States. Any other rule of construction would abrogate the judicial character of this court, and make it the mere reflex of the popular opinion or passion of the day." And in *South Carolina* v. *United States*, 199 U. S. 437, 448-449, in an opinion by Mr. Justice Brewer, this court quoted these words with approval and said:

"The Constitution is a written instrument. As such its meaning does not alter. That which it meant when adopted it means now. . . . Those things which are within its grants of power, as those grants were understood when made, are still within them, and those things not within them remain still excluded."

The words of Judge Campbell, speaking for the Supreme Court of Michigan in *Twitchell* v. *Blodgett*, 13 Mich. 127, 139-140, are peculiarly apposite. "But it may easily happen," he said, "that specific provisions may, in unforeseen emergencies, turn out to have been inexpedient. This does not make these provisions any less binding. Constitutions can not be changed by events alone. They remain binding as the acts of the people in their sovereign capacity, as the framers of Government, until they are amended or abrogated by the action prescribed by the authority which created them. It is not competent for any department of the Government to change a constitution, or declare it changed, simply because it appears ill adapted to a new state of things.

". . . Restrictions have, it is true, been found more likely than grants to be unsuited to unforeseen circumstances . . . But, where evils arise from the application of such regulations, their force cannot be denied or evaded; and the remedy consists in repeal or amendment, and not in false constructions."

The provisions of the federal Constitution, undoubtedly, are pliable in the sense that in appropriate cases they have the capacity of bringing within their grasp every new condition which falls within their meaning.[1] But, their *meaning* is changeless; it is only

[1]In such cases it is no more necessary to modify constitutional rules to govern new conditions than it is to create new words to describe them. The

their *application* which is extensible. See *South Carolina* v. *United States, supra,* pp. 448-449. Constitutional grants of power and restrictions upon the exercise of power are not flexible as the doctrines of the common law are flexible. These doctrines, upon the principles of the common law itself, modifiy or abrogate themselves whenever they are or whenever they become plainly unsuited to different or changed conditions. *Funk* v. *United States,* — U. S. —, decided December 11, 1933. The distinction is clearly pointed out by Judge Cooley, 1 Constitutional Limitations (8th Ed.) 124:

"A principal share of the benefit expected from written constitutions would be lost if the rules they established were so flexible as to bend to circumstances or be modified by public opinion. It is with special reference to the varying moods of public opinion, and with a view to putting the fundamentals of government beyond their control, that these instruments are framed; and there can be no such steady and imperceptible change in their rules as inheres in the principles of the common law. Those beneficent maxims of the common law which guard person and property have grown and expanded until they mean vastly more to us than they did to our ancestors, and are more minute, particular, and pervading in their protections; and we may confidently look forward in the future to still further modifications in the direction of improvement. Public sentiment and action effect such changes, and the courts recognize them; but a court or legislature which should allow a change in public sentiment to influence it in giving to a written constitution a construction not warranted by the intention of its founders, would be justly chargeable with reckless disregard of official oath and public duty; and if its course could become a precedent, these instruments would be of little avail. . . . What a court is to do, therefore, is *to declare the law as written,* leaving it to the people themselves to make such changes as new circumstances may require The meaning of the constitution is fixed when it is ado[illegible] and it is not different at any subsequent time when a court [illegible] occasion to pass upon it."

The whole aim of construction, as applied to a provision of the Constitution, is to discover the meaning, to ascertain and give

commerce clause is a good example. When that was adopted its application was necessarily confined to the regulation of the primitive methods of transportation then employed; but railroads, automobiles and aircraft automatically were brought within the scope and subject to the terms of the commerce clause the moment these new means of transportation came into existnce, just as they were at once brought within the meaning of the word "carrier", as defined by the dictionaries.

effect to the intent, of its framers and the people who adopted it. *Lake County* v. *Rollins,* 130 U. S. 662, 670. The necessities which gave rise to the provision, the controversies which preceded, as well as the conflicts of opinion which were settled by its adoption; are matters to be considered to enable us to arrive at a correct result. *Knowlton* v. *Moore,* 178 U. S. 41, 95. The history of the times, the state of things existing when the provision was framed and adopted, should be looked to in order to ascertain the mischief and the remedy. *Rhode Island* v. *Massachusetts,* 12 Pet. 657, 723; *Craig* v. *Missouri,* 4 Pet. 410, 431-432. As nearly as possible we should place ourselves in the condition of those who framed and adopted it. *Ex parte Bain,* 121 U. S. 1, 12. And if the meaning be at all doubtful, the doubt should be resolved, wherever reasonably possible to do so, in a way to forward the evident purpose with which the provision was adopted. *Maxwell* v. *Dow,* 176 U. S. 581, 602; *Jarrolt* v. *Moberly,* 103 U. S. 580, 586.

An application of these principles to the question under review removes any doubt, if otherwise there would be any, that the contract impairment clause denies to the several states the power to mitigate hard consequences resulting to debtors from financial or economic exigencies by an impairment of the obligation of contracts of indebtedness. A candid consideration of the history and circumstances which led up to and accompanied the framing and adoption of this clause will demonstrate conclusively that it was framed and adopted with the specific and studied purpose of preventing legislation designed to relieve debtors *especially* in time of financial distress. Indeed, it is not probable that any other purpose was definitely in the minds of those who composed the framers' convention or the ratifying state conventions which followed, although the restriction has been given a wider application upon principles clearly stated by Chief Justice Marshall in the *Dartmouth College* case, 4 Wheat. 518, 644-645.

Following the Revolution, and prior to the adoption of the Constitution, the American people found themselves in a greatly impoverished condition. Their commerce had been well-nigh annihilated. They were not only without luxuries, but in great degree were destitute of the ordinary comforts and necessities of life. In these circumstances they incurred indebtedness in the purchase of imported goods and otherwise far beyond their capacity to pay.

From this situation there arose a divided sentiment. On the one hand, an exact observance of public and private engagements was insistently urged. A violation of the faith of the nation or the pledges of the private individual, it was insisted, was equally forbidden by the principles of moral justice and of sound policy. Individual distress, it was urged, should be alleviated only by industry and frugality, not by relaxation of law or by a sacrifice of the rights of others. Indiscretion or imprudence was not to be relieved by legislation, but restrained by the conviction that a full compliance with contracts would be exacted. On the other hand, it was insisted that the case of the debtor should be viewed with tenderness; and efforts were constantly directed toward relieving him from an exact compliance with his contract. As a result of the latter view, state laws were passed suspending the collection of debts, remitting or suspending the collection of taxes, providing for the emission of paper money, delaying legal proceedings, etc. There followed, as there must always follow from such a course, a long trail of ills, one of the direct consequences being a loss of confidence in the government and in the good faith of the people. Bonds of men whose ability to pay their debts was unquestionable could not be negotiated except at a discount of thirty, forty, or fifty per cent. Real property could be sold only at a ruinous loss. Debtors, instead of seeking to meet their obligations by painful effort, by industry and economy, began to rest their hopes entirely upon legislative interference. The impossibility of payment of public or private debts was widely asserted, and in some instances threats were made of suspending the administration of justice by violence. The circulation of depreciated currency became common. Resentment against lawyers and courts was freely manifested, and in many instances the course of the law was arrested and judges restrained from proceeding in the execution of their duty by popular and tumultuous assemblages. This state of things alarmed all thoughtful men, and led them to seek some effective remedy. Marshall, Life of Washington (1807), Vol. 5, pp. 88-131.

That this brief outline of the situation is entirely accurate is borne out by all contemporaneous history, as well as by writers of distinction of a later period.[2] Compare *Edwards* v. *Kearzey*, 96

[2]Thus McMaster (History of the People of the United States, Vol. 1, p. 425)—after referring to the conditions in Rhode Island, where "the bonds

U. S. 595, 604-607. The appended note might be extended for many pages by the addition of similar quotations from the same and other writers, but enough appears to establish beyond all question the extreme gravity of the emergency, the great difficulty and frequent impossibility which confronted debtors generally in any effort to discharge their obligations.

In an attempt to meet the situation recourse was had to the legislatures of the several states under the Confederation; and these

---

of society were dissolved by paper money and tender laws"; in New Jersey, where the people nailed up the doors of their court houses; in Virginia, where the debtors "set fire to theirs in order to stop the course of justice"—says:

"The newspapers were full of bankrupt notices. The farmers' taxes amounted to near the rent of their farms. Mechanics wandered up and down the streets of every city destitute of work. Ships, shut out from every port of Europe, lay rotting in the harbors."

Channing (History of the United States, Vol. III, pp. 410-411, 482-483) paints this graphic picture of the situation:

"Nowhere was the immediate prospect more gloomy than in South Carolina. . . . In Massachusetts, at the other end of the line, the case was as bad, if not worse . . . the resources of New England were insufficient to pay even what was then owing. The case of New York was even more desperate, and for the moment Philadelphia alone seemed prosperous, for the wastage of the later years of the war had been severely felt in Virginia. . . .

" . . . Virginia was honeycombed with debt. . . .

"In South Carolina, the planters were even more heavily in debt. . . . The case of Thomas Bee is to the point. His creditors had secured executions against him; the sheriff had seized his property and had sold it at one-thirteenth of what it would have brought at private sale in ordinary times."

Nevins (The American States During and After the Revolution, p. 486), says:

"The town of Greenwich computed that during each of the five years preceding 1786 the farmers had paid in taxes the entire rental value of their land."

John Fiske (The Critical Period of American History, 8th Ed., pp. 175, 180) thus describes conditions:

" . . . about the market-places men spent their time angrily discussing politics, and scarcely a day passed without street-fights, which at times grew into riots. In the country, too, no less than in the cities, the goddess of discord reigned. The farmers determined to starve the city people into submission, and they entered into an agreement not to send any produce into the cities until the merchants should open their shops and begin selling their goods for paper [money] at its face value. . . . the farmers threw away their milk, used their corn for fuel, and let their apples rot on the ground. . . .

" . . . the courts were broken up by armed mobs. At Concord one Job Shattuck brought several hundred armed men into the town and surrounded

bodies passed, among other acts, the following: laws providing for the emission of bills of credit and making them legal tender for the payment of debts, and providing also for such payment by the delivery of specific property at a fixed valuation; instalment laws, authorizing payment of overdue obligations at future intervals of time; stay laws and laws temporarily closing access

---

the court-house, while in a fierce harangue he declared that the time had come for wiping out all debts."

Dr. David Ramsay (History of the United States, 2d Ed., 1818, Vol. III, pp. 46-47), a member of the old Congress under the Confederation, and who lived in the midst of the events of which he speaks, says:

"The non-payment of public debts sometimes inferred a necessity, and always furnished an apology, for not discharging private contracts. Confidence between man and man received a deadly wound. Public faith being first violated, private engagements lost much of their obligatory force. . . .

"From the combined operation of these causes trade languished; credit expired; gold and silver vanished; and real property was depreciated to an extent equal to that of the depreciation of continental money, . . ."

And, finally, George Ticknor Curtis, in his History of the Origin, Formation, and Adoption of the Constitution of the United States, Vol. 1, pp. 332-333:

"All contemporary evidence assures us that this [1783 to 1787] was a period of great pecuniary distress, arising from the depreciation of the vast quantities of paper money issued by the Federal and State governments; from rash speculations; from the uncertain and fluctuating condition of trade; and from the great amount of foreign goods forced into the country as soon as its ports were opened. Naturally, in such a state of things, the debtors were disposed to lean in favor of those systems of government and legislation which would tend to relieve or postpone the payment of their debts; and as such relief could come only from their State governments, they were naturally the friends of State rights and State authority, and were consequently not friendly to any enlargement of the powers of the Federal Constitution. The same causes which led individuals to look to legislation for irregular relief from the burden of their private contracts, led them also to regard public obligations with similar impatience. Opposed to this numerous class of persons were all those who felt the high necessity of preserving inviolate every public and private obligation; who saw that the separate power of the States could not accomplish what was absolutely necessary to sustain both public and private credit; and they were as naturally disposed to look to the resources of the Union for these benefits, as the other class were to look in an opposite direction. These tendencies produced, in nearly every State, a struggle, not as between two organized parties, but one that was all along a contest for supremacy between opposite opinions, in which it was at one time doubtful to which side the scale would turn."

to the courts; and laws discriminating against British creditors. I have selected, out of a vast number, a few historical comments upon the character and effect of these legislative devices.[3]

In the midst of this confused, gloomy, and seriously exigent condition of affairs, the Constitutional Convention of 1787 met at Philadelphia. The defects of the Articles of Confederation

---

[3]Charles Warren, The Making of the Constitution, pp. 5-6:

"The actual evils which led to the Federal Convention of 1787 are familiar to every reader of history and need no detailed description here. As is well known, they arose, in general, . . . ; second, from State legislation unjust to citizens and productive of dissensions with neighboring States—the State laws particularly complained of being those staying process of the Courts, making property a tender in payment of debts, issuing paper money, interfering with foreclosure of mortgages, . . ."

Fiske, *supra*, note 2, p. 168:

"By 1786, under the universal depression and want of confidence, all trade had well-nigh stopped, and political quackery, with its cheap and dirty remedies, had full control of the field. . . . a craze for fictitious wealth in the shape of paper money ran like an epidemic through the country. There was a Barmecide feast of economic vagaries; . . . And when we have threaded the maze of this rash legislation, we shall the better understand that clause in our federal constitution which forbids the making of laws impairing the obligation of contracts."

Beard, An Economic Interpretation of the Constitution of the United States, pp. 31-32:

"Money capital was . . . being positively attacked by the makers of paper money, stay laws, pine barren acts, and other devices for depreciating the currency or delaying the collection of debts. In addition there was a widespread derangement of the monetary system . . .

"Creditors, naturally enough, resisted all of these schemes in the state legislatures, and . . . turned to the idea of a national government so constructed as to prevent laws impairing the obligation of contract, emitting paper money, and otherwise benefiting debtors. It is idle to inquire whether the rapacity of the creditors or the total depravity of the debtors . . . was responsible for this deep and bitter antagonism. It is sufficient for our purposes to discover its existence and to find its institutional reflex in the Constitution."

Fisher Ames, "Eulogy on Washington," The Life and Works of Fisher Ames, Vol. II, p. 76:

"Accordingly, in some of the States, creditors were treated as outlaws; bankrupts were armed with legal authority to be persecutors; and by the shock of all confidence and faith, society was shaken to its foundations."

Illuminating comment upon some of this state legislation is to be found in Chapter VI (Vol. I) of Bancroft's "History of the Formation of the

were so great as to be beyond all hope of amendment, and the Convention, acting in technical excess of its authority, proceeded to frame for submission to the people of the several states an entirely new Constitution. Shortly prior to the meeting of the Convention, Madison had assailed a bill pending in the Virginia Assembly, proposing the payment of private debts in three annual instalments, on the ground that "no legislative principle could vindicate such an interposition of the law in private contracts."

Constitution of the United States", under the heading, "State Laws Impairing the Obligation of Contracts Prove the Need of an Overruling Union", pp. 230-236:

"[In Massachusetts] Repeated temporary stay-laws gave no real relief; they flattered and deceived the hope of the debtor, exasperating alike him and his creditor. . . .

" . . . [In Pennsylvania] in December, 1784, debts contracted before 1777 were made payable in three annual instalments. . . .

"Maryland . . . In 1782 . . . enacted a stay-law extending to January, 1784, . . .

"Georgia, in August, 1782, stayed execution for two years from and after the passing of the act. . . .

" . . . [In South Carolina in 1782] the commencement of suits was suspended till ten days after the sitting of the next general assembly. . . . On the twenty-sixth day of March, 1784, came the great ordinance for the payment of debts in four annual instalments, . . ."

Ramsay, *supra*, note 2, Vol. 3, 65-66, 106:

"The distrust which prevailed among the people, respecting the punctual fulfilment of contracts, arose from the powers claimed, and, in too many instances, exercised by the state legislatures, for impairing the obligation of contracts; . . . These prolific sources of evil were completely done away by the new constitution. . . .

" . . . State legislatures, in too many instances, yielded to the necessities of their constituents, and passed laws, by which creditors were compelled, either to wait for payment of their just demands, on the tender of security, or to take property, at a valuation, or paper money falsely purporting to be the representative of specie. These laws were considered, by the British, as inconsistent with . . . the treaty, . . . The Americans palliated these measures, by the plea of necessity; . . ."

Ramsay, The History of South-Carolina (1809), Vol. II, pp. 429-430:

"The effects of these laws, interfering between debtors and creditors, were extensive. They destroyed public credit and confidence between man and man; injured the morals of the people, and in many instances ensured and aggravated the final ruin of the unfortunate debtors for whose temporary relief they were brought forward."

The bill was lost by a single vote.[4] Pelatiah Webster had likewise assailed similar laws as altering the value of contracts; and William Paterson, of New Jersey, had insisted that "the legislature should leave the parties to the law under which they contracted."[5]

In the plan of government especially urged by Sherman and Ellsworth there was an article proposing that the legislatures of the individual states ought not to possess a right to emit bills of credit, etc., "or in any manner to obstruct or impede the recovery of debts, whereby the interests of foreigners or the citizens of any other state may be affected."[6] And on July 13, 1787, Congress in New York, acutely conscious of the evils engendered by state laws interfering with existing contracts,[7] passed the Northwest Territory Ordinance, which contained the clause: "And, in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts, or engagements, *bona fide*, and without fraud previously formed."[8] It is not surprising, therefore, that, after the Convention had adopted the clauses, no state shall "emit bills of credit," or "make any thing but gold and silver coin a tender in payment of debts," Mr. King moved to add a "prohibition on the states to interfere in private contracts." This was opposed by Gouverneur Morris and Colonel Mason. Colonel Mason thought that this would be carrying the restraint too far; that cases would happen that could not be foreseen where some kind of interference would be essential. This was on August 28. But Mason's view did not prevail, for, on September 14 following, the first clause of Art. I, § 10, was altered so as to include the provision, "No state shall . . . pass any . . . law impairing the obligation of contracts," and in that form it was adopted.[9]

---

[4]Bancroft, *supra*, note 3, Vol. I, p. 239.

[5]*Id.*, Vol. I, p. 241.

[6]*Id.*, Vol. II, p. 136.

[7]See Curtis, *supra*, note 2, Vol. 2, pp. 366-367.

[8]Ordinance for the Government of the Territory of the United States Northwest of the River Ohio, Art. II; Thorpe, American Charters, Constitutions and Organic Laws, Vol. 2, pp. 957, 961.

[9]Elliot's Debates, Vol. V, pp. 485, 488, 545, 546; *Id.*, Vol. I, pp. 271, 311; Farrand, The Records of the Federal Convention, Vol. II, pp. 439-440, 596-597, 610.

Luther Martin, in an address to the Maryland House of Delegates, declared his reasons for voting against the provision. He said that he considered there might be times of such great public calamity and distress a should render it the duty of a government in some measure to interfere by passing laws totally or partially stopping courts of justice, or authorizing the debtor to pay by instalments; that such regulations had been found necessary in most or all of the states "to prevent the wealthy creditor and the moneyed man from totally destroying the poor, though industrious debtor. Such times may again arrive." And he was apprehensive of any proposal which took from the respective states the power to give their debtor citizens "a moment's indulgence, however necessary it might be, and however desirous to grant them aid."[10]

On the other hand, Sherman and Ellsworth defended the provision in a letter to the Governor of Connecticut.[11] In the course of the Virginia debates, Randolph declared that the prohibition would be promotive of virtue and justice, and preventive of injustice and fraud; and he pointed out that the reputation of the people had suffered because of frequent interferences by the state legislatures with private contracts.[12] In the North Carolina debates, Mr. Davie declared that the prohibition against impairing the obligation of contracts and other restrictions ought to supersede the laws of particular states. He thought the constitutional provisions were founded on the strongest principles of justice.[13] Pinckney, in the South Carolina debates, said that he considered the section including the clause in question as "the soul of the Constitution," teaching the states "to cultivate those principles of public honor and private honesty which are the sure road to national character and happiness."[14]

---

[10] Elliot's Debates, Vol. I, pp. 344, 376-377.

[11] *Id.*, Vol. I, pp. 491-492.

[12] *Id.*, Vol. III, p. 478.

[13] *Id.*, Vol. IV, pp. 156, 191.

[14] *Id.*, Vol. IV, p. 333.

Mr. Warren, in his book, "The Making of the Constitution," pp. 552-555, has an interesting resume of the proceedings in the Convention and of the conflicting views which were before the state conventions for consideration. He says in part:

"The Convention then was asked to perfect their action in favor of honesty and morality, by adding a prohibition on the States which would put an end

The provision was strongly defended in The Federalist, both by Hamilton in No. 7 and Madison in No. 44. Madison concluded his defense of the clause by saying:

". . . one legislative interference is but the first link of a long chain of repetitions, every subsequent interference being naturally produced by the effects of the preceding. They very rightly infer, therefore, that some thorough reform is wanting, which will banish speculations on public measures, inspire a general prudence and industry, and give a regular course to the business of society."

Contemporaneous history is replete with evidence of the sharp conflict of opinion with respect to the advisability of adopting the clause. Dr. Ramsay (The History of South-Carolina (1809), Vol. II, pp. 431-433), already referred to, writing of the action of

---

to statutes enacting laws for special individuals, setting aside Court judgments, repealing vested rights, altering corporate charters, staying the bringing or prosecution of suits, preventing foreclosure of mortgages, altering the terms of contracts, and allowing tender in payment of debts of something other than that contracted for. The State Legislatures had hitherto passed such laws in abundant measure, and the situation was graphically described later by Chief Justice Marshall in one of his most noted decisions [Ogden *v.* Saunders, 12 Wheat. 213, 354], as follows:

" 'The power of changing the relative situation of debtor and creditor, of interfering with contracts, a power which comes home to every man, touches the interest of all, and controls the conduct of every individual in those things which he supposes to be proper for his own exclusive management, had been used to such an excess by the State Legislatures as to break in upon the ordinary intercourse of society and destroy all confidence between man and man. The mischief had become so great, so alarming, as not only to impair commercial intercourse and threaten the existence of credit, but to sap the morals of the people and destroy the sanctity of private faith. To guard against the continuance of the evil was an object of deep interest with all the truly wise as well as virtuous of this great community, and was one of the important benefits expected from a reform of the government.'

"To obviate the conditions thus described, King of Massachusetts proposed the insertion of a new restriction on the States. . . . Wilson and Madison supported his motion. Mason and G. Morris, however, believed that it went too far in interfering with the powers of the States. . . . There was also a genuine belief by some delegates that, under some circumstances and in financial crises, such stay and tender laws might be necessary to avert calamitous loss to debtors. . . . The other delegates had been deeply impressed by the disastrous social and economic effects of the stay and tender laws which had been enacted by most of the States between 1780 and 1786, and they decided to make similar legislation impossible in the future."

South Carolina and especially referring to the contract impairment clause, says that this Constitution was accepted and ratified on behalf of the state, and speaks of it as an act of great self-denial:

"The power thus given up by South-Carolina, was one she thought essential to her welfare, and had freely exercised for several preceding years. Such a relinquishment she would not have made at any period of the last five years; for in them she had passed no less than six acts interfering between debtor and creditor, with the view of obtaining a respite for the former under particular circumstances of public distress. To tie up the hands of future legislatures so as to deprive them of a power of repeating similar acts on any emergency, was a display both of wisdom and magnanimity. It would seem as if experience had convinced the state of its political errors, and induced a willingness to retrace its steps and relinquish a power which had been improperly used."

There is an old case, *Glaze* v. *Drayton*, 1 DeS. Equ. (S. C.) 109, decided in 1784, where the South Carolina court of chancery entered a decree for the specific performance of a contract for the purchase of land, but providing for the payment of the balance due under the contract "by instalments, at the times mentioned in the acts of assembly respecting the recovery of old debts." In reporting that case soon after the adoption of the Constitution, Chancellor DeSaussure added the following explanatory and illuminating note:

"The legislature, in consideration of the distressed state of the country, after the war, had passed an act, preventing the immediate recovery of debts, and fixing certain periods for the payment of debts, far beyond the periods fixed by the contract of the parties. These interferences with private contracts, became very common with most of the state legislatures, even after the distresses arising from the war had ceased in a great degree. They produced distrust and irritation throughout the community, to such an extent, that new troubles were apprehended; and nothing contributed more to prepare the public mind for giving up a portion of the state sovereignty, and adopting an efficient national government, than these abuses of power by the state legislatures."

If it be possible by resort to the testimony of history to put any question of constitutional intent beyond the domain of uncertainty, the foregoing leaves no reasonable ground upon which to base a denial that the clause of the Constitution now under consideration was meant to foreclose state action impairing the obligation of contracts *primarily and especially* in respect of such action

aimed at giving relief to debtors *in time of emergency.* And if further proof be required to strengthen what already is inexpugnable, such proof will be found in the previous decisions of this court. There are many such decisions; but it is necessary to refer to a few only which bear directly upon the question, namely: *Bronson* v. *Kinzie,* 1 How. 311; *McCracken* v. *Hayward,* 2 How. 608; *Gantly's Lessee* v. *Ewing,* 3 How. 707; *Howard* v. *Bugbee,* 24 How. 461; *Gunn* v. *Barry,* 15 Wall. 610; *Walker* v. *Whitehead,* 16 Wall. 314; *Edwards* v. *Kearzey,* 96 U. S. 595; *Barnitz* v. *Beverly,* 163 U. S. 118; and *Bradley* v. *Lightcap,* 195 U. S. 1.

Bronson v. *Kinzie* was decided at the January Term, 1843. The case involved an Illinois statute, extending the period of redemption for a period of twelve months after a sale under a decree in chancery, and another statute preventing a sale unless two-thirds of the amount at which the property had been valued by appraisers should be bid therefor. This court held both statutes invalid, when applied to an existing mortgage, as infringing the contract impairment clause. No more need now be said as to the points decided. The opinion of the court says nothing about an emergency; but it is clear that the statute was passed for the purpose of meeting the panic and depression which began in 1837 and continued for some years thereafter.[15] And in the light of what is now to be said, it is evident that the question of that emergency as a basis for the legislation was so definitely involved that it must have been considered by the court.

The emergency was quite as serious as that which the country has faced during the past three years. Indeed, it was so great that in one instance, at least, a state repudiated a portion of its public debt, and others were strongly tempted to do so.[16] Mr. Warren, in his book, "The Supreme Court in United States History," Vol. 2, pp. 376-379, gives a vivid picture of the situation. After referring to *Bronson* v. *Kinzie* and the statute extending the period of redemption therein dealt with, he points to the prevailing state of business and finance which had called the statute into

[15] See Dewey, Financial History of the United States, p. 229, *et seq.;* Schouler, History of the United States, Vol. IV, p. 276, *et seq;* McMaster, *supra,* note 2, Vol. VI, pp. 389, *et seq.,* 523, *et seq.,* 623, *et seq.*

[16] See Dewey, *supra,* note 15, p. 243, *et seq.;* McMaster, *supra,* note 2, Vol. VI, p. 627, *et seq.,* Vol. VII, p. 19, *et seq.;* Centennial History of Illinois, Vol. II, p. 231, *et seq.*

existence; to the bank failures, state debt repudiations, scarcity of hard money, the inability to pay debts except by disposing of property at ruinous prices; to the enactment of statutes for the relief of debtors, stay laws postponing collection of debts, etc., which had been passed by state after state; and to the action of this court in striking down the state statute in the face of these conditions.

"Unquestionably," he continues, "the country owes much of its prosperity to the unflinching courage with which, in the face of attack, the Court has maintained its firm stand in behalf of high standards of business morale, requiring honest payment of debts and strict performance of contracts; and its rigid construction of the Constitution to this end has been one of the glories of the Judiciary. That its decisions should, at times, have met with disfavor among the debtor class was, however, entirely natural; and while, ultimately, these debtor-relief-laws have always proved to be injurious to the very class they were designed to relieve and to increase the financial distress, fraud and extortion, temporarily, debtors have always believed such laws to be their salvation and have resented judicial decisions holding them invalid. Consequently, this opinion of the Court in the *Bronson Case* aroused great antagonism in the Western States. In Illinois, a mass meeting was held which resolved that the decision ought not to be heeded, ... Later, deference to the antagonism aroused against the Court by this decision was made when the Senator from Illinois, James Semple, introduced in the Senate in 1846, a joint resolution proposing a Constitutional Amendment to prohibit the Supreme Court from declaring void 'any Act of Congress or any State regulation on the ground that it is contrary to the Constitution of the United States . . .'"

McMaster (*supra*, note 2), Vol. VII, pp. 44-48, is to the same effect.

McCracken v. *Hayward*, decided at the January Term, 1844, dealt with the same Illinois statute; but involved a sale on execution after judgment, whereas *Bronson* v. *Kinzie* involved a mortgage. The decision simply followed the *Bronson* case. What has been said in respect of the background and setting of that case is equally applicable and need not be repeated.

Gantly's Lessee v. *Ewing* was decided at the January Term, 1845. It held unconstitutional, as applied to a preexisting mortgage, an act of Indiana providing that no real property should be sold on execution for less than half its appraised value. The statute, like those of Illinois, was enacted for the benefit of hard-

pressed debtors as a result of the same emergency. It is referred to by McMaster, *supra*, as one of the "marks on the statute books" which the "evil times through which the people were passing" had left.

Howard v. *Bugbee*, decided at the December Term, 1860, dealt with an Alabama statute authorizing a redemption of mortgaged property in two years after the sale under a decree. The statute was declared unconstitutional principally upon the authority of *Bronson* v. *Kinzie*. The opinion is very short and does not refer to the question of emergency. The statute was passed, however, in 1842 (the mortgage having been executed prior thereto), and was, therefore, one of the emergency statutes of that period. The Alabama Supreme Court, whose decision was under review here, so treated it, and justified the statute upon that ground. 32 Ala. 713, 716-717. It is worthy of note that after the decision of this court in the *Bugbee* case, Judge Walker, who delivered the opinion therein for the Alabama court, filed a dissenting opinion in *Ex parte Pollard, Ex parte Woods*, 40 Ala. 77, 110, in the course of which he said that his former opinion had been overruled by this court and he could no longer perceive any ground upon which the convictions of a legislature as to the welfare of the people could enlarge the authority to interfere, through the manipulation of the remedy, with the obligation of contracts. The basis of the legislation was, and is shown by the decision of the Alabama Supreme Court sustaining it to be, the existence of the great emergency beginning in 1837; and that question, since the Alabama decision was reviewed, was quite plainly before this court for consideration.

Walker v. *Whitehead*, decided at the December Term, 1872, held unconstitutional a Georgia statute requiring the plaintiff, suing on a debt or contract, to prove as a condition precedent to the entry of judgment in his favor that all legal taxes chargeable by law thereon had been duly paid for each year since the making of the debt or contract. The Georgia Supreme Court, 43 Ga. 538, 544-546, had sustained the act as a measure made necessary by the desperate financial and economic conditions in that state due to the Civil War. This court, making no response to the somewhat fervid presentation of this view of the matter by the state court, simply said that the degree of impairment was immaterial; that any impairment of the obligation of a contract is within the pro-

hibition of the Constitution; that "A clearer case of a law impairing the obligation of a contract, within the meaning of the Constitution, can hardly occur."

Edwards v. *Kearzey,* decided at the October Term, 1877, held invalid, as applied to a pre-existing debt, the provision of the North Carolina constitution of 1868 increasing the exemptions to which a debtor was entitled. The North Carolina Supreme Court, in a series of decisions, had sustained the state constitutional provision, principally upon the ground (*Garrett* v. *Chesire,* 69 N. C. 396, 404-405) that it was adopted at a time when "probably one-half of the debtor class are owing more *old* debts than they can pay"; and that "If under our circumstances our people are to be left without any exemptions, the policy of christian civilization is lost sight of, . . ." In the brief of defendant in error in this court (pp. 7-8) the view was strongly urged that the provision was not so much for the benefit of the debtor as for that of the state, to prevent the evils of almost universal pauperism. Attention was called to the desperate condition of the people of the state following the Civil War, and it was said that one-third of the whole population were paupers, all their property except lands having disappeared; that one-half of the people did not own land enough to afford burial for that proportion of the population; and against those who did own land the ante-war debts were piled mountain high. It was submitted that the state, on being rehabilitated, was not bound to allow the creditor to strip the few self-supporting land owners of their means of existence and thereby add them to the vast army of the impoverished; but that it had the right to defer a portion of the creditor's claim until the prostrated community had opportunity to recoup some of its losses.

This court, in response, reviewed the history of the adoption of the contract impairment clause and held the state constitutional provision invalid. "'Policy and humanity,'" it said, "are dangerous guides in the discussion of a legal proposition. He who follows them far is apt to bring back the means of error and delusion. *The prohibition contains no qualification, and we have no judicial authority to interpolate any.* [ital. added] Our duty is simply to execute it."

Barnitz v. *Beverly* was decided May 18, 1896. A law of Kansas extended the period of redemption from a sale under a mortgage for a period of eighteen months, during which time the mort-

gagor was to remain in possession and receive rents and profits, except as necessary for repairs. The act was passed in 1893 in the midst of another panic, the severity of which, still within the memory of the members of this court, is a matter of common knowledge. The effects of that panic extended into every form of industry; bank failures were on an unprecedented scale; more than half the railroads of the country were in the hands of receivers; securities fell to fifty per cent., often to twenty-five per cent., of their former value; commercial failures and unemployment became general; heavy inroads were made upon public and private resources in caring for the hungry and destitute;[17] great bodies of idle men—the so-called "industrial armies"—marched toward Washington, feeding like locusts upon the country through which they passed.

These conditions were brought to the attention of this court. In addition, the Supreme Court of Kansas, 55 Kan. 466, 484-485, had relied upon them as a justification for the legislation, and had inquired why the state legislature in a time of general depression could not "extend the indefinite estate impliedly reserved by the mortgagor, as the federal courts of equity do in particular cases, beyond the six months allowed by the general practice?"

In response to all of which, this court, after reviewing its former decisions, held the statute invalid as applied to a sale under a mortgage executed before its passage.

The present exigency is nothing new. From the beginning of our existence as a nation, periods of depression, of industrial failure, of financial distress, of unpaid and unpayable indebtedness, have alternated with years of plenty. The vital lesson that expenditure beyond income begets poverty, that public or private extravagance, financed by promises to pay, either must end in complete or partial repudiation or the promises be fulfilled by self-denial and painful effort, though constantly taught by bitter experience, seems never to be learned; and the attempt by legislative devices to shift the misfortune of the debtor to the shoulders of the creditor without coming into conflict with the contract impairment clause has been persistent and oft-repeated.

The defense of the Minnesota law is made upon grounds which were discountenanced by the makers of the Constitution and have

[17]See Dewey, *supra*, note 15, p. 444, *et seq.*; Andrews, The Last Quarter Century in the United States, Vol. II, p. 301, *et seq.*

many times been rejected by this court. That defense should not now succeed because it constitutes an effort to overthrow the constitutional provision by an appeal to facts and circumstances identical with those which brought it into existence. With due regard for the processes of logical thinking, it legitimately cannot be urged that conditions which produced the rule may now be invoked to destroy it.

The lower court, and counsel for the appellees in their argument here, frankly admitted that the statute does constitute a material impairment of the contract, but contended that such legislation is brought within the state power by the present emergency. If I understand the opinion just delivered, this court is not wholly in accord with that view. The opinion concedes that emergency does not create power, or increase granted power, or remove or diminish restrictions upon power granted or reserved. It then proceeds to say, however, that while emergency does not create power, it may furnish the occasion for the exercise of power. I can only interpret what is said on that subject as meaning that while an emergency does not diminish a restriction upon power it furnishes an occasion for diminishing it; and this, as it seems to me, is merely to say the same thing by the use of another set of words, with the effect of affirming that which has just been denied.

It is quite true that an emergency may supply the occasion for the exercise of power, depending upon the nature of the power and the intent of the Constitution with respect thereto. The emergency of war furnishes an occasion for the exercise of certain of the war powers. This the Constitution contemplates, since they cannot be exercised upon any other occasion. The existence of another kind of emergency authorizes the United States to protect each of the states of the Union against domestic violence. Const. Art. IV, § 4. But we are here dealing not with a power granted by the federal Constitution, but with the state police power, which exists in its own right. Hence the question is not whether an emergency furnishes the occasion for the exercise of that state power, but whether an emergency furnishes an occasion for the relaxation of the restrictions upon the power imposed by the contract impairment clause; and the difficulty is that the contract impairment clause forbids state action under any circumstances, if it have the effect of impairing the obligation of contracts. That clause restricts every state power in the particular specified, no matter

what may be the occasion. It does not contemplate that an emergency shall furnish an occasion for softening the restriction or making it any the less a restriction upon state action in that contingency than it is under strictly normal conditions.

The Minnesota statute either impairs the obligation of contracts or it does not. If it does not, the occasion to which it relates becomes immaterial, since then the passage of the statute is the exercise of a normal, unrestricted, state power and requires no special occasion to render it effective. If it does, the emergency no more furnishes a proper occasion for its exercise than if the emergency were non-existent. And so, while, in form, the suggested distinction seems to put us forward in a straight line, in reality it simply carries us back in a circle, like bewildered travelers lost in a wood, to the point where we parted company with the view of the state court.

If what has now been said is sound, as I think it is, we come to what really is the vital question in the case: Does the Minnesota statute constitute an impairment of the obligation of the contract now under review?

In answering that question we must first of all distinguish the present legislation from those statutes which, although interfering in some degree with the terms of contracts, or having the effect of entirely destroying them, have nevertheless been sustained as not impairing the obligation of contracts in the constitutional sense. Among these statutes are such as affect the remedy *merely*, as to which this court said in *Bronson* v. *Kinzie, supra,* at p. 316, and repeated in *Edwards* v. *Kearzey, supra,* p. 604, "Whatever belongs merely to the remedy may be altered according to the will of the state, provided the alteration does not impair the obligation of the contract. But if that effect is produced, it is immaterial whether it is done by acting on the remedy or directly on the contract itself. In either case it is prohibited by the Constitution."

Another class of statutes is illustrated by those exempting from execution and sale certain classes of property, like the tools of an artisan. Chief Justice Taney, in *Bronson* v. *Kinzie, supra,* speaking *obiter,* said that a state might properly exempt necessary implements of agriculture, or the tools of a mechanic, or articles of necessity in household furniture. But this court, in *Edwards* v. *Kearzey, supra,* struck down a provision of the North Carolina constitution which exempted every homestead, and the dwelling

and buildings used therewith, not exceeding in value $1,000, on the ground of its unconstitutionality as applied to a contract already in existence. Referring to the opinion in *Bronson* v. *Kinzie,* the court said (p. 604) that the Chief Justice seems to have had in his mind the maxim "*de minimis,*" etc. "Upon no other ground can any exemption be justified."

It is quite true also that "the reservation of essential attributes of sovereign power is also read into contracts"; and that the legislature cannot "bargain away the public health or the public morals." General statutes to put an end to lotteries, the sale or manufacture of intoxicating liquors, the maintenance of nuisances, to protect the public safety, etc., although they have the indirect effect of absolutely destroying private contracts previously made in contemplation of a continuance of the state of affairs then in existence but subsequently prohibited, have been uniformly upheld as not violating the contract impairment clause. The distinction between legislation of that character and the Minnesota statute, however, is readily observable. It may be demonstrated by an example. A, engaged in the business of manufacturing intoxicating liquor within a state, makes a contract, we will suppose, with B to manufacture and deliver at a stipulated price and at some date in the future, a quantity of whisky. Before the day arrives for the performance of the contract the state passes a law prohibiting the manufacture and sale of intoxicating liquor. The contract immediately falls because its performance has ceased to be lawful. This is so because the contract is made upon the implied condition that a particular state of things shall continue to exist, "and when that state of things ceases to exist the bargain itself ceases to exist." *Marshall* v. *Glanvill,* [1917] 2 K. B. 87, 91. In that case the plaintiff had been employed by the defendants upon a contract of service. While the contract was in force the country became involved in the World War, and plaintiff was called into the military service. The court held that this rendered performance unlawful and that the contract was at an end. It said:

"Here the parties clearly made their bargain on the footing that it should continue lawful for the plaintiff to render and for the defendants to accept his services. The rendering and acceptance of these services ceased to be lawful in July, 1916, and thereupon the bargain came to an end."

In *In re Shipton, Anderson & Co.,* [1915] 3 K. B. 676, a parcel of wheat then lying in a warehouse was sold for future payment

and delivery. The wheat was subsequently requisitioned by the English government, and the sellers became unable to deliver. The Court of King's Bench Division held that the sellers were not liable. Darling, Justice, agreeing with the opinion of Lord Reading, said (pp. 683-684):

"If one contracts to do what is then illegal, the contract itself is altogether bad. If after the contract has been made it cannot be performed without what is illegal being done, there is no obligation to perform it. In the one case the making of the contract, in the other case the performance of it, is against public policy. It must be here presumed that the Crown acted legally, and there is no contention to the contrary. We are in a state of war; that is notorious. The subject-matter of this contract has been seized by the State acting for the general good. Salus populi suprema lex is a good maxim, and the enforcement of that essential law gives no right of action to whomsoever may be injured by it."

The general subject is discussed by this court in *Omnia Co.* v. *United States*, 261 U. S. 502; and it is there pointed out (p. 513) that the effect of such a requisition is not to appropriate the contract but to frustrate it—an essentially different thing.

The same distinction properly may be made as to the contract impairment clause, in respect of subsequent state legislation rendering unlawful a state of things which was lawful when an obligation relating thereto was contracted. By such legislation the obligation is not impaired in the constitutional sense. The contract is frustrated—it disappears in virtue of an implied condition to that effect read into the contract itself. Thus, in *F. A. Tamplin Steamship Co., Ltd.*, v. *Anglo-Mexican Petroleum Products Co., Ltd.*, [1916] 2 A. C. 397, the House of Lords had before it a case where a steamer, then subject to a charter party having nearly three years to run, had been requisitioned by the Admiralty. The applicable rule was there stated to be that the court should examine the contract and the circumstances in which it was made in order to see whether or not from their nature the parties must have made their bargain on the footing that a particular state of things would continue to exist. And if they must have done so, a term to that effect would be implied, though not expressed in the contract. In *Metropolitan Water Board* v. *Dick, Kerr and Company*, [1918] A. C. 119, 127-128, 137, that rule was reaffirmed, with the additional statement that a subsequent law might be the cause of an impossibility of performance, by taking away something

from the control of the party as to which thing he had contracted to do or not to do something else; and that the court must determine whether this contingency is of such a character that it can reasonably be implied to have been in the contemplation of the parties when the contract was made.

Bearing in mind these aids toward determining whether such an implied condition may be read into a particular contract, let us revert to the example already given with respect to an agreement for the manufacture and sale of intoxicating liquor. And let us suppose that the state, instead of passing legislation prohibiting the manufacture and sale of the commodity, in which event the doctrine of implied conditions would be pertinent, continues to recognize the general lawfulness of the business, but, because of what it conceives to be a justifying emergency, provides that the time for the performance of existing contracts for future manufacture and sale shall be extended for a specified period of time. It is perfectly admissible, in view of the state power to prohibit the business, to read into the contract an implied proviso to the effect that the business of manufacturing and selling intoxicating liquors shall not, prior to the date when performance is due, become unlawful; but in the case last put, to read into the contract a pertinent provisional exception in the event of intermeddling state action would be more than unreasonable, it would be absurd, since we must assume that the contract was made on the footing that so long as the obligation remained lawful the impairment clause would effectively preclude a law altering or nullifying it however exigent the occasion might be.

That, in principle, is precisely the case here. The contract is to repay a loan within a fixed time, with the express condition that upon failure the property given as security shall be sold, and that, in the absence of a timely redemption, title shall be vested absolutely in the purchaser. This contract was lawful when made; and it has never been anything else. What the legislature has done is to pass a statute which does not have the effect of frustrating the contract by rendering its performance unlawful, but one which, at the election of one of the parties, postpones for a time the effective enforcement of the contractual obligation, notwithstanding the obligation, under the exact terms of the contract, remains lawful and possible of performance after the passage of the statute as it was before.

The rent cases—*Block* v. *Hirsh*, 256 U. S. 135; *Marcus Brown Co.* v. *Feldman*, 256 U. S. 170; *Levy Leasing Co.* v. *Siegel*, 258 U. S. 242—which are here relied upon, dealt with an exigent situation due to a period of scarcity of housing caused by the war. I do not stop to consider the distinctions between them and the present case or to do more than point out that the question of contract impairment received little, if any, more than casual consideration. The writer of the opinions in the first two cases, speaking for this court in a later case, *Penna. Coal Co.* v. *Mahon*, 260 U. S. 393, 416, characterized all of them as having gone "to the verge of the law." It, therefore, seems pertinent to say that decisions which confessedly escape the limbo of unconstitutionality by the exceedingly narrow margin suggested by this characterization should be applied toward the solution of a doubtful question arising in a different field with a very high degree of caution. Reasonably considered they do not foreclose the question here involved, and it should be determined upon its merits without regard to those cases.

We come back, then, directly, to the question of impairment. As to that, the conclusion reached by the court here seems to be that the relief afforded by the statute does not contravene the constitutional provision because it is of a character appropriate to the emergency and allowed upon what are said to be reasonable conditions.

It is necessary, first of all, to describe the exact situation. Appellees obtained from appellant a loan of $3,800; and to secure its payment, executed a mortgage upon real property consisting of land and a fourteen-room house and garage. The mortgage contained the conventional Minnesota provision for foreclosure by advertisement. The mortgagors agreed to pay the debt, together with interest and the taxes and insurance on the property. They defaulted; and, in strict accordance with the bargain, appellant foreclosed the mortgage by advertisement and caused the premises to be sold. Appellant itself bought the property at the sale for a sum equal to the amount of the mortgage debt. The period of redemption from that sale was due to expire on May 2, 1933; and, assuming no redemption at the end of that day, under the law in force when the contract was made and when the property was sold and in accordance with the terms of the mortgage, appellant would at once have become the owner in fee and entitled to the imme-

diate possession of the property. The statute here under attack was passed on April 18, 1933. It first recited and declared that an economic emergency existed. As applied to the present case, it arbitrarily extended the period of redemption expiring on May 2, 1933, to May 18, 1933—a period of sixteen days; and provided that the mortgagor might apply for a further extension to the district court of the county. That court was authorized to extend the period to a date not later than May 1, 1935, on the condition that the mortgagor should pay to the creditor all or a reasonable part of the income or rental value, as to the court might appear just and equitable, toward the payment of taxes, insurance, interest and principal mortgage indebtedness, and at such times and in such manner as should be fixed by the court. The court to whom the application in this case was made extended the time until May 1, 1935, upon the condition that payment by the mortgagor of the rental value, forty dollars per month, should be made.

It will be observed that whether the statute operated directly upon the contract or indirectly by modifying the remedy, its effect was to extend the period of redemption absolutely for a period of sixteen days, and conditionally for a period of two years. That this brought about a substantial change in the terms of the contract reasonably cannot be denied. If the statute was meant to operate only upon the remedy, it, nevertheless, as applied, had the effect of destroying for two years the right of the creditor to enjoy the ownership of the property, and consequently the correlative power, for that period, to occupy, sell or otherwise dispose of it as might seem fit. This postponement, if it had been unconditional, undoubtedly would have constituted an unconstitutional impairment of the obligation. This court so decided in *Bronson* v. *Kinzie, supra,* where the period of redemption was extended for a period of only twelve months after a sale under a decree; in *Howard* v. *Bugbee, supra,* where the extension was for two years; and in *Barnitz* v. *Beverly, supra,* where the period was extended for eighteen months. Those cases, we may assume, still embody the law, since they are not overruled.

The only substantial difference between those cases and the present one is that here the extension of the period of redemption and postponement of the creditor's ownership, is accompanied by the condition that the rental value of the property shall, in the meantime, be paid. Assuming for the moment, that a statute ex-

tending the period of redemption may be upheld if something of commensurate value be given the creditor by way of compensation, a conclusion that payment of the rental value during the two years' period of postponement is even the approximate equivalent of immediate ownership and possession is purely gratuitous. How can such payment be regarded, in any sense, as compensation for the postponement of the contract right? The ownership of the property to which petitioner was entitled carried with it not only the right to occupy or sell it, but, ownership being retained, the right to the rental value as well. So that in the last analysis petitioner simply is allowed to retain a part of what is its own as compensation for surrendering the remainder. Moreover, it cannot be foreseen what will happen to the property during that long period of time. The buildings may deteriorate in quality; the value of the property may fall to a sum far below the purchase price; the financial needs of appellant may become so pressing as to render it urgently necessary that the property shall be sold for whatever it may bring.

However these or other supposable contingencies may be, the statute denies appellant for a period of two years the ownership and possession of the property—an asset which, in any event, is of substantial character, and which possibly may turn out to be of great value. The statute, therefore, is not merely a modification of the remedy; it effects a material and injurious change in the obligation. The legally enforceable right of the creditor when the statute was passed was, at once upon default of redemption, to become the fee simple owner of the property. Extension of the time for redemption for two years, whatever compensation be given in its place, destroys that specific right and the correlative obligation, and does so none the less though it assume to create *in invitum* another and different right and obligation of equal value. Certainly, if A should contract with B to deliver a specified quantity of wheat on or before a given date, legislation, however much it might purport to act upon the remedy, which had the effect of permitting the contract to be discharged by the delivery of corn of equal value, would subvert the constitutional restriction.

A statute which materially delays enforcement of the mortgagee's contractual right of ownership and possession does not modify the remedy merely; it destroys, for the period of delay, *all* remedy so far as the enforcement of that right is concerned. The phrase,

"obligation of a contract," in the constitutional sense imports a legal duty to perform the specified obligation of *that* contract, not to substitute and perform, against the will of one of the parties, a different, albeit equally valuable, obligation. And a state, under the contract impairment clause, has no more power to accomplish such a substitution than has one of the parties to the contract against the will of the other. It cannot do so either by acting directly upon the contract, or by bringing about the result under the guise of a statute in form acting only upon the remedy. If it could, the efficacy of the constitutional restriction would, in large measure, be made to disappear. As this court has well said, whatever tends to postpone or retard the enforcement of a contract, to that extent weakens the obligation. According to one Latin proverb, "He who gives quickly, gives twice," and according to another, "He who pays too late, pays less." "Any authorization of the postponement of payment, or of means by which such postponement may be effected, is in conflict with the constitutional inhibition." *Louisiana* v. *New Orleans*, 102 U. S. 203, 207. I am not able to see any real distinction between a statute which in substantive terms alters the obligation of a debtor-creditor contract so as to extend the time of its performance for a period of two years, and a statute which, though in terms acting upon the remedy, is aimed at the obligation (as distinguished, for example, from the judicial procedure incident to the enforcement thereof) and which does in fact withhold from the creditor, for the same period of time, the stipulated fruits of his contract.

I quite agree with the opinion of the court that whether the legislation under review is wise or unwise is a matter with which we have nothing to do. Whether it is likely to work well or work ill presents a question entirely irrelevant to the issue. The only legitimate inquiry we can make is whether it is constitutional. If it is not, its virtues, if it have any, cannot save it; if it is, its faults cannot be invoked to accomplish its destruction. If the provisions of the Constitution be not upheld when they pinch as well as when they comfort, they may as well be abandoned. Being unable to reach any other conclusion than that the Minnesota statute infringes the constitutional restriction under review, I have no choice but to say so.

I am authorized to say that Mr. Justice VAN DEVANTER, Mr. Justice MCREYNOLDS and Mr. Justice BUTLER concur in this opinion.